THE GENERAL STATUTES OF NORTH CAROLINA

1971 CUMULATIVE SUPPLEMENT

Completely Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
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H. A. FINNEGAN, JR.

Volume 3D

Place in Pocket of Corresponding 1964 Replacement Volume of Main Set and Discard Previous Supplement

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Preface

This Cumulative Supplement to Replacement Volume 3D contains the general laws of a permanent nature enacted at the 1965, 1966, 1967, 1969 and 1971 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement,and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1965, 1966, 1967, 1969 and 1971 Sessions of the General Assembly affecting Chapters 157 through 167 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 260 (p. 133)-279 (p. 191).
North Carolina Court of Appeals Reports volumes 1-11 (p. 596).
Federal Reporter 2nd Series volumes 317-443 (p. 1216).
Federal Supplement volumes 217-328 (p. 224).
United States Reports volumes 373-403 (p. 442).
Supreme Court Reporter volumes 83 (p. 1560)-91 (p. 1976).
North Carolina Law Review volumes 41 (p. 665)-49 (p. 591).
Wake Forest Intramural Law Review volumes 2-6 (p. 568).
Opinions of Attorney General.

The General Statutes of North Carolina
1971 Cumulative Supplement

VOLUME 3D

Chapter 157.

Housing Authorities and Projects.

Article 1.

Housing Authorities Law.

Sec.

157-4.1. Alternative organization.

Sec.

157-32.4. Other validation of contracts, agreements, etc.

Article 1.

Housing Authorities Law.

§ 157-1. Title of article.

Editor's Note.—

For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

For comment on eviction in public housing, see 4 Wake Forest Intra. L. Rev. 112 (1968).

Object of article.—The State cannot enact laws, and cities and towns cannot pass effective ordinances, forbidding disease, vice and crime to enter into the slums of overcrowded areas, there defeating every purpose for which civilized government exists, and spreading influences detrimental to law and order; but experience has shown that this result can be more effectively brought about by the removal of physical surroundings conducive to these conditions. This is the objective of this Article, and these are the means by which it is intended to accomplish it. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Slum Clearance, etc.—

A housing authority organized pursuant to the provisions of this Article is created for a public purpose and exercises an essential governmental function. Briefly stated, its public purpose is the elimination or rehabilitation of unsafe and unsanitary dwelling units in crowded and congested areas and the construction of housing projects to provide safe and sanitary dwelling units for rental to persons of low income. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

The State does not engage in a private enterprise when it undertakes a project of slum clearance. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Property Exempt, etc.—

The case of Wells v. Housing Authority, 213 N.C. 744, 197 S.E. 693 (1938), construed this article with respect to ad valorem taxes only. Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Collection of Sales Tax from Housing Authority Is Not Prohibited.—Neither the Constitution of this State nor the Constitution and laws of the United States prohibit the collection of a sales tax on purchases of tangible personal property made by a housing authority duly created, organized and existing under and by virtue of the Housing Authorities Law enacted in 1935 by the General Assembly of North Carolina. Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Such Authority Is Not Entitled to Refund of Sales Taxes as City or Town.—A housing authority created pursuant to the provisions of the Housing Authorities Law is a municipal corporation but is not an incorporated city or town, and is not entitled to the refund of sales taxes paid on purchases of tangible personal property pursuant to the provisions of § 105-164.14 (c). Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Nor as Charitable Organization.—A municipal corporation or public agency created, organized and existing under and by virtue of the laws of this State, more particularly the Housing Authorities Law, codified as this article, is not a charitable organization within the meaning of the refund provisions of § 105-164.14 (b). Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Defendant housing authority was created and organized pursuant to the provisions of this section hence, all housing projects of defendant are subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. Philbrook v. Chapel Hill Housing Authority, 269 N.C. 598, 153 S.E.2d 153 (1967).

Hearing Requirements before Eviction.—The hearing to be afforded tenants of public housing before the determination to evict them requires (1) timely and adequate notice detailing the reasons for a proposed termination, (2) an opportunity on the part of the tenant to confront and cross-examine adverse witnesses, (3) the right of a tenant to be represented by counsel, provided by him to delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination and generally to safeguard his interests, (4) a decision, based on evidence adduced at the hearing, in which the reasons for decision and the evidence relied on are set forth, and (5) an impartial decision maker. Caulder v. Durham Housing Authority, 433 F.2d 998 (4th Cir. 1970).

Cited in Redevelopment Comm'n v. Guilford County, 1 N.C. App. 512, 162 S.E.2d 108 (1968).

§ 157-2. Finding and declaration of necessity.

Editor's Note.—

For note on retaliatory evictions and housing code enforcement, see 49 N.C.L. Rev. 569 (1971).

Due Process Must Be Afforded in Eviction.—Should an eligible tenant be wrongfully evicted, some frustration of these interests will result. Both governmental and individual interests are furthered by affording due process in the eviction procedure. Caulder v. Durham Housing Authority, 433 F.2d 998 (4th Cir. 1970).

§ 157-4. Notice, hearing and creation of authority; cancellation of certificate of incorporation.—Any 25 residents of a city and of the area within 10 miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least 10 days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area, or, if there be no such newspaper, by posting such notice in at least three public places within the city, at least 10 days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) Whether insanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or

(2) Whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or insanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor who shall thereupon appoint, as hereinafter provided, not less than five nor more than nine commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital):

(1) That a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners;
(2) The name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this Article;
(3) The term of office of each of the commissioners;
(4) The name which is proposed for the corporation; and
(5) The location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this Article, under the seal of the State, and shall record the same with the application.

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this Article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

The Secretary of State is authorized and empowered to revoke or to cancel a certificate of incorporation previously issued to an authority or housing authority upon filing in his office a petition and resolution of the council and a petition and resolution of the authority and its members requesting such revocation or cancellation and when the Secretary of State is satisfied that no indebtedness has been incurred or property acquired by said housing authority. (1935, c. 456, s. 4; 1943, c. 636, s. 7; 1961, c. 987; 1971, c. 362, s. 1; c. 599.)

Local Modification. — City of Durham: 1971, c. 575.

Editor's Note.—

The 1971 amendments substituted "not less than five nor more than nine" for "five" in the first sentence of the fourth paragraph.

The second 1971 amendatory act corrected an error in the first.

§ 157-4.1. Alternative organization.—(a) In lieu of creating a housing authority as authorized herein, the council of any city may, if it deems wise, either designate a redevelopment commission created under the provisions of chapter 160 of the General Statutes to exercise the powers, duties, and responsibilities of a housing authority as prescribed herein, or may itself exercise such powers, duties, and responsibilities. Any such designation shall be by passage of a resolution adopted in accordance with the procedure and pursuant to the finding specified in the first and second paragraphs of G.S. 157-4. In the event the council of any city designates itself to exercise the powers, duties, and responsibilities of a housing authority, then where any act, proceeding, or approval is required to be done, recommended, or approved both by a housing authority and by the council of the city, then the performance, recommendation, or approval thereof once by the council of the city shall be sufficient to make such performance, recommendation, or approval valid and legal. In the event the council of the city designates itself to exercise the powers, duties, and responsibilities of a housing authority, it may assign the administration of the housing programs, projects, and policies to any existing or new department of the city.

(b) The council of any city which has prior to July 1, 1969 created, or which may hereafter create, a housing authority may, in its discretion, by resolution abolish such housing authority, such abolition to be effective on a day set in such resolution not less than 90 days after its adoption. Upon the adoption of such a resolution, the housing authority of the city is hereby authorized and directed to take such actions and to execute such documents as will carry into effect the provisions and the intent of the resolution, and as will effectively transfer its authority, responsibilities, obligations, personnel, and property, both real and personal, to the city. Any city which abolishes a housing authority pursuant to this subsection may, at any time subsequent to such abolition or concurrently therewith, exercise the authority granted by subsection (a) of this section.

On the day set in the resolution of the council:

(1) The housing authority shall cease to exist as a body politic and corporate and as a public body;

(2) All property, real and personal and mixed, belonging to the housing authority shall vest in, belong to, and be the property of the city;

(3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the housing authority shall remain, vest in, and inure to the benefit of the city;

(4) All rentals, taxes, assessments, and any other funds, charges or fees, owing to the housing authority shall be owed to and collected by the city;

(5) Any actions, suits, and proceedings pending against, or having been instituted by the housing authority shall not be abated by such abolition, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the city shall be a party to all such actions, suits, and proceedings in the place and stead of the housing authority and shall pay or cause to be paid any judgments rendered against the housing authority in any such actions, suits, or proceedings, and no new process need be served in any such action, suit, or proceeding;

(6) All obligations of the housing authority, including outstanding indebtedness, shall be assumed by the city, and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the city;

(7) All ordinances, rules, regulations and policies of the housing authority shall continue in full force and effect until repealed or amended by the council of the city.

(c) Where the governing body of any municipality has in its discretion, by resolution abolished a housing authority, pursuant to subsection (b) above, the governing body of such municipality may, at any time subsequent to the passage of a resolution abolishing a housing authority, or concurrently therewith, by the passage of a resolution adopted in accordance with the procedures and pursuant to the finding specified in G.S. 157-4.1, designate an existing redevelopment commission created pursuant to Article 37 of Chapter 160 of the General Statutes, to exercise the powers, duties, and responsibilities of a housing authority. Where the governing body of any municipality designates, pursuant to this subsection, an existing redevelopment commission created pursuant to Article 37 of Chapter 160 of the General Statutes to exercise the powers, duties, and responsibilities of a housing authority, on the day set in the resolution of the governing body passed pursuant to subsection (b) of this section, or pursuant to subsection (c) of this section:

(1) The housing authority shall cease to exist as a body politic and corporate and as a public body;

(2) All property, real and personal and mixed, belonging to the housing authority or to the municipality as hereinabove provided in subsections (a) or (b), shall vest in, belong to, and be the property of the existing redevelopment commission of the municipality;

(3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the housing authority or in favor of the municipality as hereinabove provided in subsections (a) or (b), shall remain, vest in, and inure to the benefit of the existing redevelopment commission of the municipality;

(4) All rentals, taxes, assessments, and any other funds, charges, or fees owing to the housing authority or owing to the municipality as hereinabove provided in subsections (a) or (b), shall be owed to and collected by the existing redevelopment commission of the municipality;

(5) Any actions, suits, and proceedings pending against or having been instituted by the housing authority or the municipality, or to which the municipality has become a party as hereinabove provided in subsections (a) or (b), shall not be abated by such abolition but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the existing redevelopment commission of the municipality shall be a party to all such actions, suits, and proceedings in the place and stead of the housing authority or the municipality, and shall pay or cause to be paid any judgments rendered in such actions, suits, or proceedings, and no new processes need be served in such action, suit, or proceeding;

(6) All obligations of the housing authority or the municipality as hereinabove provided in subsections (a) or (b), including outstanding indebtedness, shall be assumed by the existing redevelopment commission of the municipality; and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the existing redevelopment commission of the municipality;

(7) All ordinances, rules, regulations, and policies of the housing authority or the municipality as hereinabove provided in subsections (a) or (b), shall continue in full force and effect until repealed and amended by the existing redevelopment commission of the municipality.

(d) A redevelopment commission designated by the governing body of any municipality to exercise the powers, duties and responsibilities of a housing authority shall, when exercising the same, do so in accordance with Chapter 157 of the General Statutes. Otherwise the redevelopment commission shall continue to exercise the powers, duties and responsibilities of a redevelopment commission in accordance with Article 37 of Chapter 160 of the General Statutes. (1969, c. 1217, s. 2; 1971, c. 116, ss. 3, 4.)

Editor's Note. — The 1971 amendment added subsections (c) and (d).

§ 157-5. Appointment, qualifications and tenure of commissioners.— An authority shall consist of not less than five nor more than nine commissioners appointed by the mayor and he shall designate the first chairman. No commissioner may be a city official. The council may at any time by resolution or ordinance increase or decrease the membership of an authority, within the limitations herein prescribed.

The mayor shall designate overlapping terms of not less than one nor more than five years for the commissioners first appointed. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. A majority of the commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1935, c. 456, s. 5; 1971, c. 362, ss. 2-5.)

Local Modification. — City of Durham: 1971, c. 575; city of Greensboro: 1971, c. 573.

Editor's Note. — The 1971 amendment substituted "not less than five nor more than nine" for "five" in the first sentence and added the third sentence of the first paragraph, rewrote the first sentence of the second paragraph and substituted "A majority of the" for "Three" at the beginning of the fifth sentence of the second paragraph.

§ 157-8. Removal of commissioners.

Local Modification. — City of Durham: 1971, c. 575.

§ 157-11. Eminent domain.

Editor's Note. — For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

A housing authority has wide discretion in the selection and location of a site for a housing project; it is not required to select a site in a slum area as the site for a low-rent housing project; and the fact that a few isolated properties in an area to be taken and dismantled are above the average standard of slum properties, or that some few desirable homes would be taken, does not affect the public character of the condemnation proceeding. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 157-13. Zoning and building laws.

Applied in Philbrook v. Chapel Hill Housing Authority, 269 N.C. 598, 153 S.E.2d 153 (1967).

§ 157-14. Types of bonds authority may issue.

Quoted in Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 157-15. Form and sale of bonds.—The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding 60 years from their respective dates, bear interest at such rate or rates, be in such denominations (which may be made interchangeable), be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds may be sold at public sale held after notice published once at least 10 days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of New York, New York or in the city of Chicago, Illinois; provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All funds so purchased shall be cancelled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this Article shall be fully negotiable. (1935, c. 456, s. 15; 1971, c. 87, s. 1.)

Editor's Note. — The 1971 amendment deleted "not exceeding six per centum (6%) per annum payable semiannually" following "such rate or rates" in the first paragraph, and at the end of the last sentence in the second paragraph deleted "provided that the interest cost to maturity of the money received for any issue of said bonds shall not exceed six per centum (6%) per annum."

§ 157-25. Housing bonds, legal investments and security.—The State and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued by a housing authority established (or hereafter established) pursuant to this Article or issued by any public housing authority or agency in the United States, when such bonds are secured by a pledge of annual contributions to be paid by the United States Government or any agency thereof, or bonds which may be issued notwithstanding any other limitations of this Chapter, by a not-for-profit corporate agency of a housing authority secured by rentals payable pursuant to section 23 of the United States Housing Act of 1937, as amended, and any such bonds shall be authorized security for all public deposits and shall be fully negotiable in this State; it being the purpose of this Article to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds and that any such bonds shall be authorized security for all public deposits and shall be fully negotiable in this State: Provided, however, that nothing contained in this Article shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities. (1935, c. 456, s. 25; 1941, c. 78, s. 3; 1971, c. 1161.)

Editor's Note.—

The 1971 amendment inserted "or bonds which may be issued notwithstanding any other limitations of this Chapter, by a not-for-profit corporate agency of a housing authority secured by rentals payable pursuant to section 23 of the United States Housing Act of 1937, as amended" and inserted "any" preceding "such bonds," both near the middle of the section.

§ 157-26. Tax exemptions.

Since a housing authority, etc.—

The case of Wells v. Housing Authority, 213 N.C. 744, 197 S.E. 693 (1938) construed this article with respect to ad valorem taxes only. Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Authority Is Not Entitled to Refund of Sales Taxes.—A housing authority created pursuant to the provisions of the Housing Authorities Law is a municipal corporation but is not an incorporated city or town, and is not entitled to the refund of sales taxes paid on purchases of tangible personal property pursuant to the provisions of § 105-164.14 (c). Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

A municipal corporation or public agency created, organized and existing under and by virtue of the laws of this State, more particularly the Housing Authorities Law, codified as this article, is not a charitable organization within the meaning of the refund provisions of § 105-164.14 (b). Housing Authority v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Quoted in Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 157-27. Reports.

Local Modification. — City of Durham: 1971, c. 575.

§ 157-28. Restriction on right of eminent domain; right of appeal preserved; investigation by Utilities Commission.

Cited in Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 157-29. Rentals and tenant selection.

When the annual net income of the tenant exceeds the prescribed limit, he must move to other dwelling accommodations. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 157-32.4. Other validation of contracts, agreements, etc.—All contracts or agreements of housing authorities heretofore entered into with the federal government or its agencies, and with municipalities or others relating to financial assistance for housing projects in which it was required that loans or advances shall bear an interest rate in excess of six per centum (6%) per annum, or in which a municipality or others had agreed to pay funds equal to the interest in excess of six per centum (6%) per annum are hereby validated, ratified, confirmed, approved and declared legal with respect to the payment of interest in excess of six per centum (6%), and all things done or performed in reference thereto. The housing authorities are hereby authorized to assume the full obligation of the municipalities under the contracts or agreements with reference to interest in excess of six per centum (6%), and to reimburse any municipality which has made any interest payment under such contracts or agreements. (1971, c. 87, s. 2.)

§ **157-33. Notice, hearing and creation of authority for a county.**— Any twenty-five (25) residents of a county may file a petition with the clerk of the board of county commissioners setting forth that there is a need for an authority to function in the county. Upon the filing of such a petition such clerk shall give notice of the time, place and purposes of a public hearing at which the board of county commissioners will determine the need for an authority in the county. Such notice shall be given at the county's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the county or, if there be no such newspaper, by posting such a notice in at least three public places within the county, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing to be held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the county and to all other interested persons. After such a hearing, the board of county commissioners shall determine (i) whether insanitary or unsafe inhabited dwelling accommodations exist in the county and/or (ii) whether there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof. In determining whether dwelling accommodations are unsafe or insanitary, the board of county commissioners shall take into consideration the following: The physical condition and age of the buildings; the degree of overcrowding; the percentage of the land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the board of county commissioners shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall thereupon either (i) determine that the board of county commissioners shall itself constitute and act ex officio as an authority or (ii) appoint, as hereinafter provided, five commissioners to act as an authority. Said authority shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital)

(1) That a notice has been given and public hearing has been held as aforesaid, that the board of county commissioners made the aforesaid determination after such hearing and appointed them as commissioners;
(2) The name, and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this article;
(3) The term of office of each of the commissioners, except where the authority consists of the board of county commissioners ex officio;
(4) The name which is proposed for the corporation; and
(5) The location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners, a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

If the board of county commissioners, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1941, c. 78, s. 4; 1943, c. 636, s. 7; 1969, c. 785, s. 1.)

Editor's Note.—

The 1969 amendment deleted "having a population of more than sixty thousand (60,000)" following the word "county" the first time such word appears in the first sentence of the first paragraph, inserted, in the first sentence of the third paragraph, "either (i) determine that the board of county commissioners shall itself constitute an act ex officio as an authority or (ii)" and added "except where the authority consists of the board of county commissioners ex officio" to subdivision (3) of the fourth paragraph.

§ 157-34. Commissioners and powers of authority for a county.— The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor; provided, that the board of county commissioners may determine in the case of any authority for its county that the board of county commissioners itself shall constitute and act ex officio as the authority. Except as otherwise provided herein, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities and the commissioners of such housing authorities: Provided, that for such purposes the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "clerk of the board of county commissioners" and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context: Provided, further, that a housing authority created for a county shall not be subject to the limitations provided in subdivision (4) of § 157-29 of the housing authorities law with respect to housing projects for farmers of low income. (1941, c. 78, s. 4; 1969, c. 785, s. 2.)

Editor's Note.—The 1969 amendment divided the section, which formerly comprised only one sentence, into two sentences and added the proviso to the present first sentence.

§ 157-39.2. Increasing area of operation of regional housing authority.—The area of operation or boundaries of a regional housing authority shall be increased from time to time to include one or more additional contiguous counties not already within a regional housing authority if the board of county commissioners of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties each adopts a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority. Upon the adoption of such resolutions, any county housing authority created for any such additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided. Provided, however, that such resolutions shall not be adopted unless the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, bonds, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided: Provided, further, that when the above condition is complied with and the area of operation of such regional housing authority is increased to include such additional county, as hereinabove provided, all rights, contracts, bonds, and property, real and personal, of such county housing authority shall be in the name of and vested in such regional housing authority, all contracts and bonds of such county housing authority shall be the contracts and bonds of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority.

When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds: Provided, that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of county commissioners of each of the counties in the regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties shall by resolution declare that there is a need for the inclusion of such county or counties in the area of operation of the regional housing authority, only if:

(1) The board of county commissioners of each such additional county or counties find that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford, and

(2) The board of county commissioners of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties find that the regional housing authority would be a more efficient or economical administrative unit if the area of operation of the regional housing authority is increased to include such additional county or counties. (1943, c. 636, s. 5; 1971, c. 431, s. 1.)

Editor's Note. — The 1971 amendment, in the third sentence, substituted "unless" for "if there is a county housing authority created for any such additional county which has any bonds or notes outstanding unless first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authorities the obligor thereon; and second," and substituted "condition is" for "two conditions are."

§ 157-39.3. Decreasing area of operation of regional housing authority.—The area of operation or boundaries of a regional housing authority shall be decreased from time to time to exclude one or more counties from such area if the board of county commissioners of each of the counties in such area and the commissioners of the regional housing authority each adopt a resolution declaring that there is a need for excluding such county or counties from such area: Provided, that if such action decreases the area of operation of the regional housing authority to only one county, such authority shall thereupon constitute and become a housing authority for such county, in the same manner as though such authority were created, and constituted a public and corporate body for such county pursuant to other provisions of this housing authority law, and the commissioners of such authority shall be thereupon appointed as provided for the appointment of commissioners of a housing authority created for a county.

The board of county commissioners of each of the counties in the area of operation of the regional housing authority and the commissioners of the regional housing authority shall adopt a resolution declaring that there is a need for excluding a county or counties from such area only if:

(1) Each such board of county commissioners of the counties to remain in the area of operation of the regional housing authority and the commissioners of the regional housing authority find that, because of facts arising or determined subsequent to the time when such area first included the county or counties to be excluded, the regional housing authority would be a more efficient or economical administrative unit if such county or counties were excluded from such area, and

(2) The board of county commissioners of each county or counties to be excluded and the commissioners of the regional housing authority each also find that another housing authority for such county or counties would be a more efficient or economical administrative unit to function in such county or counties.

Nothing contained herein shall be construed as preventing a county or counties excluded from the area of operation of a regional housing authority, as provided above, from thereafter being included within the area of operation of any housing authority in accordance with this Article.

Any property held by a regional housing authority within a county or counties excluded from the area of operation of such authority as herein provided, shall, as soon as practicable after the exclusion of said county or counties, respectively, be disposed of by such authority in the public interest. (1943, c. 636, s. 5; 1971, c. 431, s. 2.)

Editor's Note. — The 1971 amendment deleted "that no action may be taken pursuant to this section if the regional housing authority has outstanding any bonds or notes, unless first all holders of such bonds and notes consent in writing to such action: Provided, further" following "Provided" in the first paragraph, and deleted "(because of the aforesaid changed facts)" preceding "another housing authority" in subdivision (2) of the second paragraph.

§ 157-39.5. Consolidated housing authority.—If the governing body of each of two or more municipalities (with a population of less than five hundred, but having an aggregate population of more than five hundred) by resolution declares that there is a need for one housing authority for all of such municipalities to exercise in such municipalities the powers and other functions prescribed for a housing authority, a public body corporate and politic to be known as a consolidated housing authority (with such corporate name as it selects) shall thereupon exist for all of such municipalities and exercise its powers and other functions within its area of operation (as herein defined), including the power to undertake projects therein; and thereupon any housing authority created for any of such municipalities shall cease to exist except for the purpose of winding up its affairs and executing a deed of its real property to the consolidated housing authority. Provided, that the creation of a consolidated housing authority and the finding of need therefor shall be subject to the same provisions and limitations of this Housing Authorities Law as are applicable to the creation of a regional housing authority and that all of the provisions of this Housing Authorities Law applicable to regional housing authorities and the commissioners thereof shall be applicable to consolidated housing authorities and the commissioners thereof: Provided, further that the area of operation or boundaries of a consolidated housing authority shall include all of the territory within the boundaries of each municipality joining in the creation of such authority together with the territory within ten miles of the boundaries of each such municipality, except that such area of operation may be changed to include or exclude any municipality or municipalities (with its aforesaid surrounding territory) in the same manner and under the same provisions as provided in this article for changing the area of operation of a regional housing authority by including or excluding a contiguous county or counties: Provided, further, that for all such purposes the term "board of county commissioners" shall be construed as meaning "governing body" except in § 157-36, where it shall be construed as meaning "mayor" or other executive head of the municipality, the term "county" shall be construed as meaning "municipality," the term "clerk" shall be construed as meaning "clerk of the municipality or officer with similar duties," the term "region" shall be construed as meaning "area of operation of the consolidated housing authority" and the terms "county housing authority" and "regional housing authority" shall be construed as meaning "housing authority of the city" and "consolidated housing authority," respectively, unless a different meaning clearly appears from the context.

The governing body of any such municipality for which a housing authority has not been created may adopt the above resolution if it first determines that there is a need for a housing authority to function in said municipality, which determination shall be made in the same manner and subject to the same conditions as the determination required by § 157-4 for the creation of a housing authority for a city: Provided, that after notice given by the clerk (or officer with similar duties) of the municipality, the governing body of the municipality may, without a petition therefor, hold a hearing to determine the need for a housing authority to function therein.

Except as otherwise provided herein, a consolidated housing authority and the commissioners thereof shall, within the area of operation of such consolidated housing authority have the same functions, rights, powers, duties, privileges, immunities and limitations as those provided for housing authorities created for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities, counties, or groups of counties were applicable to consolidated housing authorities. (1943, c. 636, s. 5; 1961, c. 200, s. 3; 1965, c. 431, s. 3.)

Editor's Note.—
The 1965 amendment substituted "five hundred" for "five thousand" at the end of the phrase in parentheses near the beginning of the section.

ARTICLE 2.

Municipal Co-operation and Aid.

§ 157-42. Conveyance, lease or agreement in aid of housing project.

Editor's Note.—
For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

§ 157-43. Advances and donations by the city and municipality.

Editor's Note.—For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

Article 3.

Eminent Domain.

§ 157-50. Eminent domain for housing projects.

Discretion of Housing Authority in Selection of Site.—

In accord with 1st paragraph in original. See Philbrook v. Chapel Hill Housing Authority, 269 N.C. 598, 153 S.E.2d 153 (1967).

In accord with 2nd paragraph in original. See Philbrook v. Chapel Hill Housing Authority, 269 N.C. 598, 153 S.E.2d 153 (1967).

In accord with 3rd paragraph in original. See Philbrook v. Chapel Hill Housing Authority, 269 N.C. 598, 153 S.E.2d 153 (1967).

A housing authority has wide discretion in the selection and location of a site for a housing project; it is not required to select a site in a slum area as the site for a low-rent housing project; and the fact that a few isolated properties in an area to be taken and dismantled are above the average standard of slum properties, or that some few desirable homes would be taken, does not affect the public character of the condemnation proceeding. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Chapter 157A.

Historic Properties Commissions.

Sec.
157A-1. Legislative findings.
157A-2. Appointment of historic properties commission.
157A-3. Powers of the properties commission.
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Sec.
157A-8. Authority to acquire historic buildings.
157A-9. Appropriations.
157A-10. Ownership of property.
157A-11. Chapter to apply to publicly owned buildings and structures.
157A-12. Conflict with other laws.
157A-13. Remedies.

§ 157A-1. Legislative findings.—The historical heritage of our State is one of our most valued and important assets. Conservation of historic properties will stabilize and increase the values in their areas and strengthen the overall economy of the State. This Chapter authorizes cities and counties of the State, within their respective zoning jurisdictions, and by means of listing, regulation, and acquisition,

(1) To safeguard the heritage of the city or county by preserving any property therein that embodies important elements of its cultural, social, economic, political or architectural history; and

(2) To promote the use and conservation of such property for the education, pleasure and enrichment of the residents of the city or county and the State as a whole. (1971, c. 885, s. 1.)

§ 157A-2. Appointment of historic properties commission.—Before exercising the powers set forth in this Chapter, the governing board of any city or county shall appoint or designate a historic properties commission for said city or county. The commission shall serve at the pleasure of the governing board and consist of not less than five nor more than 10 members, a majority of whom have demonstrated special interest, experience or education in history or architecture. In establishing the commission and making appointments to it, the governing body may seek the advice of any State or local historical agency, society or organization. Members shall be appointed for terms not to exceed three years and shall be eligible for reappointment as shall be specified by the governing board. As an alternative to the appointment of a separate historic properties commission, the governing board may designate, ex officio, the members of a historic district commission created pursuant to G.S. 160A-395 through 160A-399 as the historic properties commission. The governing board may also designate itself or a city or county planning board to serve, ex officio, as the historic properties commission for the city or county. All members of a historic properties commission, whether appointed or designated, shall be residents of the area of zoning jurisdiction in which the powers authorized by this Chapter are exercised. The powers conferred by this Chapter may be exercised only within the zoning jurisdiction of the city or county. Members of the commission shall serve without pay, but may be reimbursed for expenses incurred in the performance of their duties. Membership on a historic properties commission is hereby declared, pursuant to Article VI, Section 9, of the Constitution of North Carolina, to be an office that may be held concurrently with any other elective or appointive office. (1971, c. 885, s. 2.)

§ **157A-3. Powers of the properties commission.**—Any city or county historic properties commission appointed or designated pursuant to this Chapter shall be authorized to:

(1) Recommend to the city or county governing board structures, sites, areas or objects to be designated by ordinance as "historic properties."

(2) Acquire the fee or any lesser included interest to any such historic properties, to hold, manage, restore and improve the same, and to exchange and dispose of the same by sale, lease or otherwise subject to rights of public access and other covenants and in a manner that will conserve the property for the purposes of this Chapter.

(3) Restore, preserve and operate such historic properties.

(4) Recommend to the governing board that designation of any building, structure, site, area or object as a historic property be revoked or removed.

(5) Conduct an educational program on historic properties within its jurisdiction.

(6) Cooperate with the State, federal and local governments in pursuance of the purposes of this Chapter. The governing board or the commission when authorized by the governing board may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law.

(7) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.

(8) All meetings or hearings of the commission shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public. (1971, c. 885, s. 3.)

§ **157A-4. Adoption of an ordinance; criteria for designation.**—Upon complying with G.S. 157A-5, the governing board may adopt and from time to time amend or repeal an ordinance designating one or more historic properties on the following criteria: historical and cultural significance; suitability for preservation or restoration; educational value; cost of acquisition, restoration, maintenance, operation or repair; possibilities for adaptive or alternative use of the property; appraised value; and the administrative and financial responsibility of any person or organization willing to underwrite all or a portion of such costs. In order for any building, structure, site, area or object to be designated in the ordinance as a historic property, it must in addition meet the criteria established for inclusion of the property in the National Register of Historic Places established by the National Historic Preservation Act of 1966, Public Law 89-665, 15 U.S.C.A. section 470(a), as amended, as evidenced by appropriate findings in resolutions of the city or county historic properties commission.

The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, and any other information the governing board deems necessary within the authority of this Chapter. For each building, structure, site, area or object designated as a historic property, the ordinance shall require that the waiting period set forth in G.S. 157A-6 be observed prior to its demolition, material alteration, remodeling or removal. For each designated historic property, the ordinance shall also provide for a suitable sign on the property that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If the owner objects the sign shall be placed on a nearby public right-of-way. (1971, c. 885, s. 4.)

§ **157A-5. Required procedures.**—No ordinance designating a historic building, structure, site, area or object nor any amendment thereto may be adopted, nor may any property be accepted or acquired by a historic properties commission or the governing board of a city or county, until the following procedural steps have been taken:

(1) The historic properties commission shall make or cause to be made an investigation and report on the historic, architectural, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition.

(2) The North Carolina Department of Archives and History, acting through the Advisory Council on Historic Preservation or another agent or employee of the Department designated by the Director, shall make an analysis of and recommendations concerning the report of the historic properties commission. This is waived if the Department fails to submit its analysis and recommendations to the governing board within 60 days after written request for the analysis has been mailed to the Department by the clerk of the city or county governing board. This requirement is also waived with respect to any building, structure, site, area or object of national, State or local historical significance that is currently listed (as certified by the Director of the Department of Archives and History) on the National Register of Historic Places established by the National Historic Preservation Act of 1966, Public Law 89-665, 15 U.S.C.A. Section 470(a), as amended.

(3) The historic properties commission and the governing board shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published at least once in a newspaper generally circulated within the city or county in which the property or properties to be designated or acquired are located, and written notice of the hearing shall be mailed by the properties commission to all owners and occupants of properties whose identity and current mailing address can be ascertained by the exercise of reasonable diligence. All such notices shall be published or mailed not less than 10 nor more than 20 days prior to the date set for the public hearing.

(4) Following the joint public hearing, the governing board may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposal.

(5) Upon adoption of the ordinance, the owners and occupants of each designated historic property shall be given written notification of such designation by the governing board, insofar as reasonable diligence permits. One copy of the ordinance and each amendment thereto shall be filed by the historic properties commission in the office of the register of deeds of the county in which the property or properties are located. Each historic property designated in the ordinance shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the historic properties commission shall pay a reasonable fee for filing and indexing. In the case of any property lying within the zoning jurisdiction of a city, a second copy of the ordinance and each amendment thereto shall be kept on file in the office of the city or town clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and each amendment thereto shall be given to the city or county building inspector, if any. The fact that a building, structure, site, area or object has been designated a historic property shall be clearly indi-

cated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(6) Upon the adoption of the historic properties ordinance or any amendment thereto, it shall be the duty of the historic properties commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes. (1971, c. 885, s. 5.)

§ **157A-6. Required waiting period.**—A property which has been designated as a historic property by ordinance as herein provided may, after notice has been made to the owner as provided in G.S. 157A-5(5), be demolished, materially altered, remodeled or removed only after 90 days' written notice of the owner's proposed action has been given to the historic properties commission. During this period, the commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the property. During this period, or at any time prior thereto following notice of designation to the owner as provided in G.S. 157A-5(5) and where such action is reasonably necessary or appropriate for the continued preservation of the property, the commission may enter into negotiations with the owner for the acquisition by gift, purchase, exchange or otherwise of the property or any interest therein authorized by G.S. 157A-3. The commission may reduce the waiting period required by this section in any case where the owner would suffer extreme hardship, not including loss of profit, unless a reduction in the required waiting period were allowed. The commission shall have the discretionary authority to waive all or any portion of the required waiting period, provided that the alteration, remodeling or removal is undertaken subject to conditions agreed to by the commission insuring the continued maintenance of the architectural or historical integrity and character of the property. (1971, c. 885, s. 6.)

§ **157A-7. Certain changes not prohibited.**—Nothing in this Chapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on a historic property that does not involve a change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, demolition or removal of any such feature when a building inspector or similar official certifies to the commission that such action is required for the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent a property owner from making any use of his property not prohibited by other statutes, ordinances, or regulations. (1971, c. 885, s. 7.)

§ **157A-8. Authority to acquire historic buildings.**—Within the limits of its zoning jurisdiction, any city or county governing board (and, with the approval of the governing board, any historic properties commission) may acquire property designated by ordinance as historic property, and may pay therefor out of any funds which may be appropriated for that purpose. The general powers granted to municipalities by G.S. 160-200(1), (2), (4), and (5) and to counties by G.S. 153-2(2), (3), and (4), and by G.S. 153-9(13) and (14) shall be deemed to include specifically the authority to acquire, maintain, manage, repair, restore, exchange or dispose of any building or structure designated as a historic property in any ordinance adopted pursuant to this Chapter. In the event the property is acquired under this section but is not used for some other governmental purpose, it shall be deemed to be a "museum" under the provisions of G.S. 160-200(40), notwithstanding the fact that the property may be or remain in private use, so long as the property is made reasonably accessible to and open for visitation by the general public. (1971, c. 885, s. 8.)

§ **157A-9. Appropriations.**—A city or county governing board is authorized to make appropriations to a historic properties commission established pursuant to this Chapter in any amount that it may determine necessary for the expenses of the operation of the commission, and may make available any additional amounts necessary for the acquisition, restoration, preservation, operation and management of historic buildings, structures, sites, areas or objects designated as historic properties, or of land on which historic buildings or structures are located or to which they may be removed. (1971, c. 885, s. 9.)

§ **157A-10. Ownership of property.** — All lands, buildings, structures, sites, areas or objects acquired by funds appropriated by a city or county shall be acquired in the name of the city or county unless otherwise provided by the governing board. So long as owned by the city or county, historic properties may be maintained by or under the supervision and control of the city or county. However, all lands, buildings or structures acquired by a historic properties commission from funds other than those appropriated by a city or county may be acquired and held in the name of the historic properties commission, the city or county, or both. (1971, c. 885, s. 10.)

§ **157A-11. Chapter to apply to publicly owned buildings and structures.**—Nothing in this Chapter shall be construed to prevent the regulation or acquisition of historic buildings, structures, sites, areas or objects owned by the State of North Carolina or any of its political subdivisions, agencies, or instrumentalities. (1971, c. 885, s. 11.)

§ **157A-12. Conflict with other laws.**—Whenever any ordinance adopted pursuant to this Chapter requires a longer waiting period or imposes other higher standards with respect to a designated historic property than are established under any other statute, charter provision, or regulation, this Chapter shall govern. Whenever the provisions of any other statute, charter provision, ordinance or regulation require a longer waiting period or impose other higher standards than are established under this Chapter, such other statute, charter provision, ordinance or regulation shall govern. (1971, c. 885, s. 12.)

§ **157A-13. Remedies.**—In case any building, structure, site, area or object designated a historic property is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled or removed, except in compliance with the ordinance, the city or county or the historic properties commission, may institute any appropriate action or proceedings to prevent such unlawful demolition, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such historic property. (1971, c. 885, s. 13.)

Chapter 158.

Local Development.

ARTICLE 1.

Local Development Act of 1925.

§ 158-1. Purposes of article; expenditures and levy of taxes authorized; elections and levies validated.

Local Modification.—City of Burlington: 1969, c. 642.

Editor's Note.—

For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

Opinions of Attorney General. — Mrs. Christine Boring, Clerk, Town of Franklin, 7/9/69.

§ 158-2. Ratification or petition of voters required; exception as to appropriations from nontax sources.

Editor's Note.—

Chapter 236, Session Laws 1967, amended s. 1½ of c. 1229, Session Laws 1963, referred to in note in original, by deleting Forsyth County. Chapter 315, Session Laws 1967, amended s. 1½ of c. 1229, Session Laws 1963, by deleting Guilford County.

Opinions of Attorney General. — Mrs. Christine Boring, Clerk, Town of Franklin, 7/9/69.

§ 158-7. Disposition of surplus revenues.

Local Modification.—City of Burlington: 1969, c. 642.

ARTICLE 2.

Economic Development Commissions.

§ 158-14. Regional planning and economic development commissions authorized. — Any municipalities and/or counties desiring to exercise the powers granted by this article may, at their option, create a regional planning and economic development commission, which shall have and exercise all of the powers and duties granted to a regional economic development commission under this article and in addition the powers and duties granted to a regional planning commission under article 23 of chapter 153. In the event that such a combined commission is created, it shall keep separate books of accounts for appropriations and expenditures made pursuant to this article and for appropriations and expenditures made pursuant to article 23 of chapter 153. The financial limitations set forth in each such article shall govern expenditures made pursuant to such article. (1961, c. 722, s. 2; 1965, c. 431, s. 2.)

Editor's Note.—The 1965 amendment changed the references at the end of the first and second sentences from article 22 of chapter 153 to article 23 of chapter 153.

ARTICLE 3.

Tax Elections for Industrial Development Purposes.

§ 158-24. Counties to which article applies.—The provisions of this article shall apply only to the following counties: Alexander, Burke, Caswell, Chowan, Edgecombe, Franklin, Harnett, Haywood, Hertford, Mitchell, Northampton, Onslow, Pasquotank, Perquimans, Person, Polk, Rockingham, Rutherford, Tyrrell, Vance and Warren. (1959, c. 212, s. 2; 1961, cc. 208, 228, 339, 560, 683, 701, 1011, 1058; 1963, c. 157, s. 2; cc. 443, 504, 506, 613, 1101; 1965, cc. 189, 523, 622.)

Editor's Note.—

The first 1965 amendment added Hertford and Northampton, the second 1965 amendment added Rockingham, and the third 1965 amendment added Pasquotank to the list of counties.

Chapter 159.

Local Government Acts.

Article 1.

Local Government Commission and Director of Local Government.

Sec.
159-17.1. Facsimile seals and signatures on bonds, notes or other obligations.

Sec.
159-28.1. Investment of unit funds.
159-47.1. Issuance of bonds without coupons.
159-49.1. Investment of bond proceeds.
159-49.2. [Repealed.]

Revision of Chapter Effective July 1, 1973.—Session Laws 1971, c. 780, effective July 1, 1973, revised and rewrote this Chapter, substituting new §§ 159-1 to 159-182 for former §§ 159-1 to 159-68. The 1971 act also repealed numerous sections in Chapters 153 and 160 and elsewhere in the General Statutes and incorporated their provisions, as revised, in new Chapter 159, entitled "Local Government Finance."

Session Laws 1971, c. 780, ss. 38 to 41, provide:

"Sec. 38. Nothing in this act is intended to affect in any way any rights or interests (whether public or private) (i) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act, or (ii) derived from or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of orders, ordinances, or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

"Sec. 39. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by (i) the repeal herein of any acts repealing such law, or (ii) any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

"Sec. 40. Nothing in this act shall be construed to impair the obligation of any bond, note, or coupon outstanding on the effective date of this act.

"Sec. 41. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act shall be abated or otherwise affected by the adoption of this act."

Session Laws 1971, c. 780, s. 42, contains a severability clause.

ARTICLE 1.

Local Government Commission and Director of Local Government.

§ 159-3. Creation of Local Government Commission.—There is hereby created a commission to be known as the Local Government Commission, consisting of nine members of whom the State Auditor and the State Treasurer and the Secretary of State and the Commissioner of Revenue shall be members ex officio and of whom five members shall be appointed by the Governor to hold office during his pleasure. One of such appointees shall have had experience as the chief executive officer or a member of the governing body of a city or town and one thereof shall have had experience as a member of the governing body of a county at the time of their appointment. The members of the Commission, both ex officio members and appointed members, shall be required to give such bond, if any, as the Governor may require. The State Treasurer shall be ex officio Director of Local Government and shall also be the treasurer and chairman of the Commission. The Board shall elect a vice-chairman from its members who shall hold office at the will of the Commission. The appointed members of the Commission shall be entitled to the amount provided in G.S. 138-5 for each day actually spent in the service of the Commission, but shall receive no salary or other compensation, and all members shall be entitled to their necessary traveling and other expenses.

The Director shall appoint some competent person as secretary of the Commission and assistant to the Director and may appoint a deputy secretary and such other assistants as may be necessary, who shall be responsible to the Director. The salaries of the secretary of the Commission and the deputy secretary shall be set by the Governor subject to the approval of the Advisory Budget Commission. The deputy secretary shall have and exercise each and every power of whatsoever nature and kind as the secretary of the Commission himself may exercise, and all actions taken by the deputy secretary and the signing by him of any and all documents and papers provided for in this article shall be effective the same as though the secretary of the Commission himself had taken such action or signed such documents and papers. The Commission shall have power to adopt such rules and regulations as may be necessary for carrying out its duties under this article. The Commission shall hold quarterly regular meetings in the city of Raleigh or at such place and times as may be designated by the Commission, and may hold special meetings at any time upon notice to each member personally given or sent by mail or telegraph not later than the fifth day before the meeting, which notice need not state the purpose of the meeting. It shall have the right to call upon the Attorney General or any assistant thereof for legal advice in relation to its powers and duties. The functions of the Local Government Commission and of the Director of Local Government shall be maintained and operated as a separate and distinct division of the department of the State treasury. (1931, c. 60, s. 7; c. 296, s. 8; 1933, c. 31, s. 1; 1957, c. 541, s. 18; 1963, c. 1130; 1969, c. 445, s. 1.)

Editor's Note.—

The 1969 amendment substituted "the amount provided in G.S. 138-5" for "ten dollars" in the sixth sentence.

State Government Reorganization.—The Local Government Commission was transferred to the Department of State Treasurer by § 143A-33, enacted by Session Laws 1971, c. 864.

§ **159-13. Sale of bonds and notes.**—All bonds and notes of a unit, unless sold pursuant to a call for bids heretofore legally given, shall be sold by the Commission at its office in the city of Raleigh, but the Commission shall not be required to make any such sale or to call for bids for any bonds or notes until it shall have approved the issuance thereof as hereinabove provided nor until it shall have received such transcripts, certificates and documents as it may in its discretion require as a condition precedent to the sale or advertisement. Before any such sale is conducted the Commission shall cause a notice of the proposed sale to be published at least once at least ten days before the date fixed for the receipt of bids (i) in a newspaper published in the unit having the largest or next largest circulation in the unit or if no newspaper is there published, then in a newspaper published in the county in which the unit is located, if any, and if there be no such newspaper such notice shall be posted at the door of the courthouse, and (ii) such notice, in the discretion of the Commission, may be published also in some other newspaper of greater general circulation published in the State. The Commission may in its discretion cause such notice to be published in a journal approved by the Commission and published in New York City, devoted primarily to the subject of State, county and municipal bonds; provided, however, that notes maturing not more than six months from their date may be disposed of either by private or public negotiation, after five days' notice has been given in the manner specified in clause (i) of this section; and provided, further, that upon request of the board or body authorizing any of such bonds or notes for the purpose of refunding, funding, or renewing indebtedness, and with the consent of the holder of any such indebtedness so to be refunded, funded or renewed, the Commission through the State Treasurer may exchange any such bonds or notes for a like or greater amount of such indebtedness, and make such adjustment of accrued interest as may be requested by said board or body, in which event the publication of notice as hereinabove provided shall not be required. The notice published shall state that the bonds or notes are to be sold upon sealed bids and that there will be no auction, and shall give the amount of the bonds or notes, the place of sale, the time of sale or the time limit for the receipt of proposals and that bidders must present with their bids an official bank check, a cashier's check or a certified check upon an incorporated bank or trust company payable unconditionally to the order of the State Treasurer for two percent of the face value of the bonds and one half of one percent on notes bid for, drawn upon an incorporated bank or trust company, the purpose of such check being to secure the unit against any loss resulting from the failure of the bidder to comply with the terms of his bid. The Commission shall keep a record of the names and addresses of all who request information as to the time for receipt of bids for such bonds or notes, and shall mail or send a copy of such notice of sale and a descriptive circular in relation thereto to all such names and addresses, but failure so to do shall not affect the legality of the bonds or notes. (1931, c. 60, s. 17, c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943.)

Editor's Note.—

The 1969 amendment inserted "an official bank check, a cashier's check or" near the middle of the fourth sentence, and substituted "upon an incorporated bank" for "on some bank" near the end of the fourth sentence.

§ 159-17.1. Facsimile seals and signatures on bonds, notes or other obligations.—All laws, whether general, local, private or special, authorizing and providing for the issuance of bonds, notes or other obligations of a unit within the meaning of G.S. 159-2, a part of the Local Government Act, as it may be amended from time to time, are hereby amended and supplemented to provide that the governing body of a unit may, in its discretion, authorize (i) the imprinting of a facsimile of the seal of the unit on any bond, note or other obligation of the unit in lieu of physically affixing such seal thereon and (ii) the execution of any bond, note or other obligation by facsimile rather than manual signatures; provided, however, that at least one manual signature must appear on every bond, note or other obligation which signature may be the manual signature of the representative of the Local Government Commission to the certificate of the Commission on such bond, note or other obligation.

The powers granted by this section are in addition to and not in substitution for any other powers heretofore or hereafter granted by any other law. (1969, c. 29.)

§ 159-20. Contract for services must be approved by Commission.

Cited in North Carolina Turnpike Authority v. Pine Island, Inc., 265 N.C. 109, 143 S.E.2d 319 (1965).

§ 159-25. Investment of unit sinking funds.—Sinking funds shall be deposited or invested as provided in this chapter, and such deposits and investments shall be subject to the approval of the Director of Local Government. (1931, c. 60, s. 29; 1933, cc. 143, 436; 1939, c. 146; 1967, c. 798, s. 2.)

Editor's Note.—

The 1967 amendment rewrote this section.

§ 159-28.1. Investment of unit funds.—(a) From time to time the governing body of a unit may deposit at interest or invest, as provided in subsections (b) and (c), all or part of the cash balance of any unit fund, including but not limited to the funds whose investment is authorized by G.S. 115-80.3, G.S. 153-142.24, G.S. 153-135.1, G.S. 159-25, G.S. 159-49.1, G.S. 160-411.5, and G.S. 160-431. The governing body may by resolution designate any officer, employee, or member of the governing body to manage the unit's deposits and investments on behalf of the governing body subject to whatever restrictions the governing body may impose, and such designee shall have the power to purchase, sell, and exchange securities on behalf of the governing body. The governing body shall exercise due diligence to assure that temporarily idle cash is invested or deposited at a reasonable rate of interest but shall be available to the unit when needed for the purpose for which it was raised.

(b) Moneys made available for investment may be deposited at interest in any bank or trust company in this State in the form of time deposits, certificates of deposit, or such other form of deposit as the Director of Local Government may approve. Such deposits shall be secured as provided in § 159-28.

(c) Moneys made available for investment may be invested in the following classes of securities, and no others:

(1) Obligations of the United States of America;

(2) Obligations of any agency or instrumentality of the United States of America if the payment of interest and principal of such obligations is fully guaranteed by the United States of America;

(3) Obligations of the State of North Carolina;

(4) Bonds and notes of any North Carolina Local Government Unit, subject to such restrictions as the Director of Local Government may impose;

(5) Shares of any savings and loan association organized under the laws of this State and shares of any federal savings and loan association having its principal office in this State, to the extent that the investment in such shares is insured by the United States of America or an agency thereof or by any mutual deposit guaranty association authorized by the Commissioner of Insurance of North Carolina to do business in North Carolina pursuant to article 7A of Chapter 54 of the General Statutes, provided that in the case of a savings and loan association which is insured by a mutual deposit guaranty association, the maximum investment each governing body may make in each such savings and loan association shall be fifteen thousand dollars ($15,000.00);

(6) Obligations of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, the Federal National Mortgage Association, Banks for Cooperatives, and the Federal Land Banks maturing no later than eighteen months after the date of purchase.

(d) (1) The purchase, sale, and trade of securities authorized by this section may be by private negotiation, and units are authorized to pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program. Provisions shall be made for the adequate safe keeping of the evidences of investment and the adequate bonding of persons charged with their custody or management. Proper recording and accounting shall be made of all investment and deposit transactions.

(2) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or other sound accounting principle prescribed by the governing body. Interest earned on the deposit or investment of bond funds may be used for the purpose for which the bonds were sold or may be applied to the payment of principal or interest of the bonds.

(3) If funds are invested in registered securities, the securities may be released from registration and transferred on the books of registry kept by or on behalf of the issuer by signature of a person designated to carry out that function by the governing body.

(e) Insofar as the provisions of any other statute, whether general, local, or special, are inconsistent with the provisions of this section, this section shall be controlling. (1967, c. 798, s. 1; 1969, c. 862.)

Editor's Note.—The 1969 amendment added at the end of subdivision (5) of subsection (c) the provisions as to insurance by a mutual deposit guaranty association authorized to do business in North Carolina.

§ **159-42. Law applicable to all counties, cities and towns.** — The provisions of this article shall apply to every unit having the power to levy taxes ad valorem, regardless of any provisions to the contrary in any general, special or local act enacted before the adjournment of the regular session of the General Assembly in 1969. (1931, c. 60, s. 74; 1935, c. 356, s. 3; 1941, c. 191; 1947, c. 992; 1949, c. 925; 1955, c. 1276; 1961, c. 1106; 1969, c. 788.)

Editor's Note.—

The 1969 amendment substituted "1969" for "1961" at the end of the section.

§ **159-47.1. Issuance of bonds without coupons.** — Notwithstanding the provisions of any general, local, private or special laws authorizing and providing for the issuance of bonds of a unit, the governing body of a unit may authorize, subject to the approval of the Local Government Commission, the issuance, in lieu of coupon bonds, of a single bond without coupons in a denomination equal to the aggregate principal amount of such coupon bonds and payable in installments corresponding to the maturities of such coupon bonds. Such bond without coupons shall bear interest at the same rate or rates as such coupon bonds and shall be registered as to both principal and interest. At the request of the holder of a single bond without coupons, the governing body of such unit shall within ninety days after its receipt of such request, cause to be prepared and executed and delivered to the holder in exchange for such single bond without coupons, coupon bonds in an aggregate principal amount equal to the principal amount of such single bond with coupons then unpaid and having maturities corresponding to the maturities of the installments of the principal of such single bond without coupons then unpaid and bearing interest at the same rate or rates as provided in such single bond without coupons. Upon any such exchange, such single bond without coupons shall be cancelled. The reasonable expenses and charges of the unit and the Commission in connection with such exchange shall, at the option of the governing body of the unit, be paid by the holder or the unit. Until so exchanged, such single bond without coupons shall in all respects be entitled to the same benefits as the coupon bonds to be issued. (1969, c. 685, s. 1.)

Editor's Note.—Session Laws 1969, c. 685, s. 2, provides: "The powers granted by this act are in addition to and not in substitution for any other powers heretofore or hereafter granted by any other law."

§ **159-49.1. Investment of bond proceeds.**—Bond proceeds may be deposited at interest or invested as provided by G.S. 159-28.1. (1943, c. 14; 1967, c. 798, s. 2.)

Editor's Note. —

The 1967 amendment rewrote this section.

§ **159-49.2**: Repealed by Session Laws 1967, c. 798, s. 2.

Editor's Note.—The repealing act provides that it is the intent and purpose of the act that the investment of bond proceeds shall be as provided by §§ 159-28.1 and 159-49.1.

Chapter 159.

Local Government Finance.

(This Chapter is not effective until July 1, 1973.)

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Short Title and Definitions.

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Local Government Commission.

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(This Chapter is not effective until July 1, 1973.)

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159-150. Sworn statement of debt; debt limitation.
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(This Chapter is not effective until July 1, 1973.)

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Bond Anticipation and Tax and Revenue Anticipation Notes.

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159-181. Enforcement of Chapter.
159-182. Offending officers and employees removed from office.

Revision of Chapter. — Session Laws 1971, c. 780, effective July 1, 1973, revised and rewrote former Chapter 159, substituting new §§ 159-1 to 159-182 for former §§ 159-1 to 159-68. The 1971 act also repealed numerous sections in Chapters 153 and 160 and elsewhere in the General Statutes and incorporated their provisions, as revised, in new Chapter 159. No attempt has been made to point out the changes effected, but, where appropriate, the historical citations to the former sections have been added to the corresponding sections of the revised Chapter.

Session Laws 1971, c. 780, ss. 38 to 41, provide:

"Sec. 38. Nothing in this act is intended to affect in any way any rights or interests (whether public or private) (i) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act, or (ii) derived from or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of orders, ordinances, or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

"Sec. 39. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by (i) the repeal herein of any acts repealing such law, or (ii) any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

"Sec. 40. Nothing in this act shall be construed to impair the obligation of any bond, note, or coupon outstanding on the effective date of this act.

"Sec. 41. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act shall be abated or otherwise affected by the adoption of this act."

Session Laws 1971, c. 780, s. 42, contains a severability clause.

SUBCHAPTER I. SHORT TITLE AND DEFINITIONS.

Article 1.

Short Title and Definitions.

§ 159-1. Short title and definitions.—(a) This Chapter may be cited as "The Local Government Finance Act."

(b) The words and phrases defined in this section have the meanings indicated when used in this Chapter, unless the context clearly requires another meaning, or unless the word or phrase is given a more restrictive meaning by definition in another Article herein.

(1) "Chairman" means the Chairman of the Local Government Commission.

(2) "City" includes towns and incorporated villages.

(3) "Clerk" means an officer or employee of a local government or public authority charged by law or direction of the governing board with the duty of keeping the minutes of board meetings and conserving records evidencing official actions of the board.

(4) "Commission" mean the Local Government Commission.

(5) "Publish," "publication," and other forms of the word "publish" mean insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements.

(6) "Secretary" means the secretary of the Local Government Commission.

(c) Words in the singular number include the plural, and in the plural include the singular. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender. (1927, c. 81, s. 2; 1931, c. 60, s. 2; 1971, c. 780, s. 1.)

§ **159-2. Computation of time.**—(a) Notwithstanding any other provisions of law, whenever in this Chapter an act is to be done within a given period of time, the period of time shall be computed according to the rules set out in this section.

(b) When an act is to be done within a given number of days before or after a given day, the period is computed by counting forward beginning with the day following the given day, or counting backward beginning with the day next before the given day. Saturdays, Sundays, and holidays are counted as any other day.

(c) The word "month" means 30 days, unless the words "calendar month" are used, in which case the number of days in the month may vary according to the calendar.

(d) The word "year" means the calendar year.

(e) The word "day," when used to denote a period of time within which an act may be done, means a period of 24 hours beginning at 12:00 midnight.

(f) When a time of day is given, the time is local time in the City of Raleigh, North Carolina. (1971, c. 780, s. 1.)

SUBCHAPTER II. LOCAL GOVERNMENT COMMISSION.

Article 2.

Local Government Commission.

§ **159-3. Local Government Commission established.**—(a) The Local Government Commission shall consist of nine members, including the State Treasurer, the State Auditor, the Secretary of State, and the Commissioner of Revenue ex officio, three members appointed by the Governor, one by the Lieutenant Governor, one by the Speaker of the House to serve for a term of four years. Of the five appointed members, one shall have been the mayor or a member of the governing board of a city or town, and one shall have been a member of a board of county commissioners. The State Treasurer shall be chairman of the Local Government Commission ex officio. Membership on the Commission is hereby declared to be an office that may be held concurrently with other elective or appointive offices, as authorized by Article VI, § 9, of the Constitution.

(b) The Commission shall meet at least quarterly in the City of Raleigh, and may hold special meetings at any time or place upon notice to each member given in person or by mail not later than the fifth day before the meeting. The notice need not state the purpose of the meeting.

(This Chapter is not effective until July 1, 1973.)

Action of the Commission shall be taken by resolution adopted by majority vote of those present and voting. A majority of the Commission constitutes a quorum.

(c) The appointed members of the Commission are entitled to the per diem compensation and allowances prescribed by G.S. 138-5. All members are entitled to reimbursement for necessary travel and other expenses.

(d) The Commission may call upon the Attorney General for legal advice in relation to its powers and duties.

(e) The Local Government Commission shall operate as a division of the Department of the State Treasurer.

(f) The Commission may adopt rules and regulations to carry out its powers and duties. (1931, c. 60, s. 7; c. 296, s. 8; 1933, c. 31, s. 1; 1957, c. 541, s. 18; 1963, c. 1130; 1969, c. 445, s. 1; 1971, c. 780, s. 1.)

State Government Reorganization.—The Local Government Commission was transferred to the Department of State Treasurer by § 143A-33, enacted by Session Laws 1971, c. 864.

§ **159-4. Executive committee; appeal.**—(a) The State Auditor, the State Treasurer, the Secretary of State, and the Commissioner of Revenue shall constitute the executive committee of the Local Government Commission. The executive committee is vested with all the powers of the Commission when it is not in session, except that the executive committee may not overrule, reverse, or disregard any action of the full Commission. Action of the executive committee shall be taken by resolution adopted by a majority of those present and voting. Any three members of the executive committee constitute a quorum. The chairman may call meetings of the executive committee at any time.

(b) Any member of the Commission or any person affected by an action of the executive committee may appeal to the full Commission by filing a request for review with the chairman within five days after the action is taken. Review of executive committee action by the full Commission shall be de novo. (1931, c. 60, ss. 8, 10; 1933, c. 31, s. 2; 1953, c. 675, s. 27; 1971, c. 780, s. 1.)

§ **159-5. Secretary and staff of the Commission.**—The chairman shall appoint a secretary of the Commission, and may appoint such other deputies and assistants as may be necessary, who shall be responsible to the chairman through the secretary. The salary of the secretary shall be fixed by the Governor with the approval of the Advisory Budget Commission. The secretary and his deputies and assistants shall have and may exercise any power that the chairman himself may exercise. All actions taken by the secretary, including the signing of any documents and papers provided for in this Chapter, shall be effective as though the chairman himself had taken such action or signed such documents or papers. (1931, c. 60, s. 7; c. 296, s. 8; 1933, c. 31, s. 1; 1957, c. 541, s. 18; 1963, c. 1130; 1969, c. 445, s. 1; 1971, c. 780, s. 1.)

§ **159-6**: Reserved for future codification purposes.

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL.

ARTICLE 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

§ **159-7. Short title; definitions.**—(a) This Article may be cited as "The Local Government Budget and Fiscal Control Act."

(b) The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning.

(This Chapter is not effective until July 1, 1973.)

(1) "Budget" is a proposed plan for raising and spending money for specified programs, functions, activities or objectives during a fiscal year.

(2) "Budget ordinance" is the ordinance that levies taxes and appropriates revenues for specified purposes, functions, activities, or objectives during a fiscal year.

(3) "Budget year" is the fiscal year for which a budget is proposed or a budget ordinance is adopted.

(4) "Debt service" is the sum of money required to pay installments of principal and interest on bonds, notes, and other evidences of debt accruing within a fiscal year, and to maintain sinking funds.

(5) "Deferred revenues" are taxes and other revenues collected in advance of the fiscal year in which they will become due.

(6) "Encumbrances" are obligations in the form of purchase orders or contracts that are chargeable to an appropriation. An obligation ceases to be an encumbrance when paid or when the actual liability is recorded.

(7) "Fiscal year" is the annual period for the compilation of fiscal operations. The fiscal year begins on July 1 and ends on June 30.

(8) "Fund" is an independent fiscal and accounting entity consisting of cash and other resources together with all related liabilities, obligations, reserves, and equities which are segregated by appropriate accounting techniques, pursuant to a budget or budget ordinance, for the purpose of carrying on specific activities or attaining certain objectives in accordance with established legal regulations, restrictions, or limitations.

(9) "Fund balance" is the excess of cash and other assets of a fund over its liabilities, encumbrances, reserves, and deferred revenues.

(10) "Nontax revenues" are revenues which (i) are not taxes, or (ii) are not locally levied and collected taxes.

(11) "Public authority" is a municipal corporation (other than a unit of local government) that is not subject to the Executive Budget Act (G.S. 143-1 through G.S. 143-34.2).

(12) A "reserve" is that portion of a fund balance set aside to meet obligations or commitments which will or may fall due in a future fiscal year, amounts equal to assets other than cash, or the amount of uncollected taxes and other receivables which will be available, when and if collected, for use in a future fiscal year.

(13) "Sinking fund" means a fund held for the retirement of term bonds.

(14) "Special district" is a unit of local government (other than a county, city, town, or incorporated village) that is created for the performance of limited governmental functions or for the operation of particular utility or public service enterprises.

(15) "Taxes" do not include special assessments.

(16) "Unit," "unit of local government," or "local government" is a municipal corporation that is not subject to the Executive Budget Act (G.S. 143-1 through G.S. 143-34.2) and that has the power to levy taxes, and all boards, agencies, commissions, authorities, and institutions thereof that are not independent municipal corporations. (1927, c. 146, ss. 1, 2; 1955, c. 724; 1971, c. 780, s. 1.)

§ 159-8. Annual balanced budget ordinance.—Each local government and public authority shall operate under an annual balanced budget ordinance adopted and administered in accordance with this Article. A budget ordinance is balanced when the sum of estimated net revenues and appropriated fund balances is equal to appropriations. The budget ordinance shall cover a fiscal year beginning July 1 and ending June 30. Notwithstanding any other provisions of law, from and after August 1, 1973, no local government or public authority shall have any power to levy taxes or raise other revenues, incur debts, disburse money, or enter into any contract or agreement requiring the payment of money, except in accordance with a budget ordinance adopted pursuant to this Article. (1971, c. 780, s. 1.)

§ **159-9. Budget officer.** — Each local government and public authority shall appoint a budget officer to hold office at the will of the governing board. In counties or cities having the manager form of government, the county or city manager shall be the budget officer. Counties not having the manager form of government may impose the duties of budget officer upon the county finance officer or any other county officer or employee except the sheriff, or in counties having a population of more than 7,500, the register of deeds. Cities not having the manager form of government may impose the duties of budget officer on any city officer or employee, including the mayor if he agrees to undertake them. A public authority or special district may impose the duties of budget officer on the chairman or any member of its governing board or any other officer or employee. (1971, c. 780, s. 1.)

§ **159-10. Budget requests.**—Before April 30 of each fiscal year (or an earlier date fixed by the budget officer), each department head shall transmit to the budget officer the budget requests and revenue estimates for his department for the budget year. The budget request shall be an estimate of the financial requirements of the department for the budget year, and shall be made in such form and detail, with such supporting information and justifications, as the budget officer may prescribe. The revenue estimate shall be an estimate of all revenues to be realized by department operations during the budget year. At the same time, the finance officer or department heads shall transmit to the budget officer a complete statement of the amount expended for each category of expenditure in the budget ordinance of the immediately preceding fiscal year, a complete statement of the amount estimated to be expended for each category of expenditure in the current year's budget ordinance by the end of the current fiscal year, the amount realized from each source of revenue during the immediately preceding fiscal year, and the amount estimated to be realized from each source of revenue by the end of the current fiscal year, and such other information and data on the fiscal operations of the local government or public authority as the budget officer may request. (1927, c. 146, s. 5; 1955, cc. 698, 724; 1971, c. 780, s. 1.)

§ **159-11. Preparation and submission of budget and budget message.**—(a) Upon receipt of the budget requests and revenue estimates and the financial information supplied by the finance officer and department heads, the budget officer shall prepare a budget for consideration by the governing board in such form and detail as may have been prescribed by the budget officer or the governing board. The budget shall comply in all respects with the limitations imposed by G.S. 159-13(b), and unless the governing board shall have authorized or requested submission of an unbalanced budget as provided in subsection (c) of this section, the budget shall be balanced.

(b) The budget, together with a budget message, shall be submitted to the governing board not later than June 1. The budget and budget message should, but need not, be submitted at a formal meeting of the board. The budget message should contain a concise explanation of the governmental goals fixed by the budget for the budget year, should explain important features of the activities anticipated in the budget, should set forth the reasons for stated changes from the previous year in program goals, programs, and appropriation levels, and should explain any major changes in fiscal policy.

(c) The governing board may authorize or request the budget officer to submit a budget containing recommended appropriations in excess of estimated revenues. If this is done, the budget officer shall present the appropations recommendations

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in a manner that will reveal for the governing board the nature of the activities supported by the expenditures that exceed estimated revenues. (1927, c. 146, s. 6; 1955, cc. 698, 724; 1969, c. 976, s. 1; 1971, c. 780, s. 1.)

§ 159-12. Filing and publication of the budget; budget hearings.—(a) On the same day that he submits the budget to the governing board, the budget officer shall file a copy of it in the office of the clerk to the board where it shall remain available for public inspection until the budget ordinance is adopted. The clerk shall make a copy of the budget available to all news media in the county. He shall also publish a statement that the budget has been submitted to the governing board, and is available for public inspection in the office of the clerk to the board. The statement shall also give notice of the time and place of the budget hearing required by subsection (b) of this section.

(b) Before adopting the budget ordinance, the board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear. (1927, c. 146, s. 7; 1955, cc. 698, 724; 1971, c. 780, s. 1.)

§ 159-13. The budget ordinance; form, adoption, limitations, tax levy, filing.—(a) Not earlier than 20 days after the budget is presented to the board and not later than July 1, the governing board shall adopt a budget ordinance making appropriations and levying taxes for the budget year in such sums as the board may deem sufficient and proper, whether greater or less than the sums recommended in the budget. The budget ordinance may be in any form that the board deems most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall be so organized that the accounting system will show appropriations and revenues by line items within at least the following funds:

(1) General fund.
(2) Debt service fund.
(3) School funds required by Chapters 115 and 115A of the General Statutes.
(4) Public assistance funds required by Chapter 108 of the General Statutes.
(5) A fund for each function or activity financed in whole or in part by property taxes voted by the people pursuant to Article V, § 2(5) of the Constitution.
(6) A fund for each utility or other public service enterprise owned and operated by the unit. When a water system and a sanitary sewer system are operated as a consolidated system, one fund may be established and maintained for the consolidated system.
(7) A capital project fund for each bond order to account for the proceeds of bonds issued thereunder and for all other resources used for the acquisition of fixed assets financed by the bond proceeds.
(8) A fund for each special district whose taxes are collected by the unit.

The board may establish any other funds it deems advisable.

Portions of the budget ordinance applicable to school administrative units, community colleges, and technical institutes shall be organized as provided in Chapters 115 and 115A of the General Statutes.

(b) The following directions and limitations shall bind the governing board in adopting the budget ordinance:

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.
(2) The full amount of any deficit in each fund shall be appropriated.
(3) A contingency appropriation may not exceed five percent (5%) of the total of all other appropriations in the same fund, except contingency appropriations in public assistance funds maintained pursuant to Chapter 108 of the General Statutes. Each expenditure to be charged against a contingency appropriation shall be authorized by resolution of the

governing board, which resolution shall be deemed an amendment to the budget ordinance setting up an appropriation for the object of expenditure authorized. The governing board may authorize the budget officer to authorize expenditures from contingency appropriations subject to such limitations and procedures as it may prescribe. Any such expenditures shall be reported to the board at its next regular meeting and recorded in the minutes.

(4) No appropriation may be made that would require the levy of a tax in excess of any constitutional or statutory limitation, or expenditures of revenues for purposes not permitted by law.

(5) The total of all appropriations for purposes which require voter approval for expenditure of tax funds under Article V, § 2(5), of the Constitution shall not exceed the total of all estimated nontax revenues (not including nontax revenues required by law to be spent for specific purposes) and taxes levied for such purposes pursuant to a vote of the people.

(6) The estimated percentage of collection of property taxes shall not be greater than the percentage of the levy actually realized in cash as of June 30 during the preceding fiscal year.

(7) Amounts to be realized from collection of taxes levied in prior fiscal years shall be included in estimated revenues.

(8) The estimates of revenues other than the property tax shall not exceed the amount actually realized in cash from each source in the preceding fiscal year, unless the governing board determines that the facts warrant the expectation that the estimated amount will actually be realized in cash during the budget year.

(9) No appropriation may be made from funds established pursuant to Chapters 115 and 115A of the General Statutes to any other fund except to a capital reserve fund account for school purposes or to the debt service fund for servicing school-related debt.

(10) Appropriations made to another fund from a fund established to account for property taxes levied pursuant to a vote of the people may not exceed the amount of revenues other than the property tax available to the fund.

(11) No appropriations may be made from a fund established to account for taxes collected on behalf of a special district to any other fund unless the special district has ceased to exist or to levy taxes.

(12) No appropriations may be made from a public assistance fund maintained in accordance with Chapter 108 of the General Statutes to any other fund except in accordance with G.S. 108-57.

(13) No appropriation may be made from a capital project fund established to account for the proceeds of a bond issue except (i) for the purpose for which the bonds were issued, (ii) to the appropriate debt service fund, or (iii) to an account within a capital reserve fund consistent with the purposes for which the bonds were issued.

(14) No appropriation may be made from a utilities or public service enterprise fund to any fund other than the debt service fund unless the total of all other appropriations in the fund equal or exceed the amount required to meet current operating expenses, authorized capital outlay, and debt service currently due on outstanding utility or enterprise bonds or notes.

Notwithstanding subdivisions (9), (10), (11), (12), or (14) of this subsection, any fund may contain an appropriation to another fund to cover the cost of (i) levying and collecting the taxes and other revenues allocated to the fund, and (ii) building maintenance and other general overhead and administrative expenses properly allocable to functions or activities financed from the fund.

(c) The budget ordinance of a local government shall levy taxes on property at rates that will produce the revenue necessary to balance appropriations and revenues, after taking into account the estimated percentage of the levy that will not be collected during the fiscal year. The budget ordinance of a public authority shall be balanced so that appropriations do not exceed revenues.

(d) The budget ordinance shall be entered in the minutes of the governing board and within five days after adoption copies thereof shall be filed with the finance officer, the budget officer, and the clerk to the governing board. (1927, c. 146, s. 8; 1955, cc. 698, 724; 1969, c. 976, s. 2; 1971, c. 780, s. 1.)

§ **159-14. Budgets of special districts.**—If the tax-levying power of a special district is by law exercised on its behalf by a county or city, and if the county or city governing board is vested by law with discretion as to what rate of tax it will levy on behalf of the special district, the governing board of the special district shall transmit to the governing board of the county or city on or before June 1 a request to levy taxes on its behalf for the budget year at a stated rate. The county or city governing board shall then determine what rate of tax it will approve, and shall so notify the district governing board not later than June 15. Failure of the county or city governing board to act on the district's request on or before June 15 and to so notify the district governing board by that date shall be deemed approval of the full rate requested by the district governing board. Upon receiving notification from the county or city governing board as to what rate of tax will be approved, the district governing board shall complete its budget deliberations and shall adopt its budget ordinance.

If the taxes of a special district are collected on its behalf by a county or city, and if the county or city governing board has no power to approve the district tax levy, the district governing board shall adopt its budget ordinance not later than July 1 and on or before July 15 shall notify the county or city collecting its taxes of the rate of tax it has levied. If the district does not notify the county or city governing board on or before July 15 of the rate of tax it has levied, the county or city is not required to collect the district's taxes for the fiscal year. (1971, c. 780, s. 1.)

§ **159-15. Amendments to the budget ordinance.**—Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after its adoption in any manner which could have been done at the time it was adopted. However, no amendment may increase or reduce a tax levy or in any manner alter a taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures at it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes. (1927, c. 146, s. 13; 1955, cc. 698, 724; 1971, c. 780, s. 1.)

§ **159-16. Interim budget.**—In case the adoption of the budget ordinance is delayed until after July 1, the governing board shall make interim appropriations for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the local government or public authority for the interval between the beginning of the budget year and the adoption of the budget ordinance. Interim appropriations so made shall be charged to the proper appropriations in the budget ordinance. (1927, c. 146, s. 14; 1955, cc. 698, 724; 1971, c. 780, s. 1.)

§ **159-17. Ordinance procedures not applicable to budget adoption.**—Notwithstanding the provisions of any city charter, general law, or local act, any action with respect to the adoption of the budget ordinance may be taken at any regular or special meeting of the governing board by a simple majority of those present and voting, a quorum being present. Actions taken with respect to a budget ordinance need not be published or subjected to any other procedural requirements governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Article. The adoption of the budget ordinance and the levy of taxes therein shall not be subject to the provisions of any city charter or local act concerning initiative and referendum. During the 20-day period beginning with the submission of the budget, the governing board may hold any special meetings that may be necessary to complete its work on the budget ordinance, and any provisions of law concerning the call of special meetings shall not apply during that time so long as (i) each member of the board has actual notice of each special meeting called for the purpose of considering the budget, and (ii) no business other than consideration of the budget is taken up. Nothing in this section shall be construed to allow the holding of closed meetings or executive sessions by any governing board otherwise prohibited by law from holding them. (1971, c. 780, s. 1.)

Part 2. Capital Reserve Funds.

§ **159-18. Capital reserve funds.**—Any local government or public authority may establish and maintain a capital reserve fund for any purposes for which it may issue bonds. A capital reserve fund shall be established by resolution or ordinance of the governing board which shall state (i) the purposes for which the fund is created, (ii) the approximate periods of time during which the moneys are to be accumulated for each purpose, (iii) the approximate amounts to be accumulated for each purpose, and (iv) the sources from which moneys for each purpose will be derived. (1943, c. 593, ss. 3, 5; 1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1.)

§ **159-19. Amendments.**—The resolution may be amended from time to time in the same manner in which it was adopted. Amendments may, among other provisions, authorize the use of moneys accumulated or to be accumulated in the fund for capital outlay purposes not originally stated. (1943, c. 593, s. 7; 1967, c. 1189; 1971, c. 780, s. 1.)

§ **159-20. Funding capital reserve funds.**—Capital reserve funds may be funded by appropriations and transfer of moneys or investment securities from any other fund consistent with the limitations imposed in G.S. 159-13(b). When moneys or investment securities, the use of which is restricted by law, come into a capital reserve fund, the identity of such moneys or investment securities shall be maintained by appropriate accounting entries. (1943, c. 593, s. 4; 1945, c. 464, s. 2; 1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1.)

§ **159-21. Investment.**—The cash balances, in whole or in part, of capital reserve funds may be deposited at interest or invested as provided by G.S. 159-30. (1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1.)

§ **159-22. Withdrawals.**—Withdrawals from a capital reserve fund may be authorized by resolution of the governing board of the local government or public authority. No withdrawal may be authorized for any purpose not specified in the resolution or ordinance establishing the fund or in a resolution or ordinance amending it. The withdrawal resolution or ordinance shall authorize the disbursement of moneys from the capital reserve fund to an appropriate appropriation in one of the funds maintained pursuant to G.S. 159-13(a). No withdrawal may be made which would result in the appropriation of moneys or investment securities for purposes for which an adequate balance of eligible moneys or investment securities is not then available in the capital reserve fund. Withdrawals from a capital reserve fund account established for school purposes may be made only upon the request of the appropriate board of education or board of trustees. Withdrawals from a capital reserve fund account established for public health or mental health purposes may be made only upon the request of the appropriate board of health or mental health authority. (1943, c. 593, ss. 11, 16; 1945, c. 464, s. 2; 1949, c. 196, s. 3; 1957, c. 863, s. 1; 1967, c. 1189; 1971, c. 780, s. 1.)

§ **159-23**: Reserved for future codification purposes.

Part 3. Fiscal Control.

§ **159-24. Finance officer.**—Each local government and public authority shall appoint a finance officer to hold office at the pleasure of the appointing board or official. The finance officer may be entitled "accountant," "treasurer," "finance director," "finance officer," or any other reasonably descriptive title. Except as hereinafter provided, the duties of the finance officer may be imposed on the budget officer or any other officer or employee on whom the duties of budget officer may be imposed. (1971, c. 780, s. 1.)

§ **159-25. Duties of finance officer; dual signatures on checks; internal control procedures subject to Commission regulation.**—(a) The finance officer shall have the following powers and duties:

(1) He shall keep the accounts of the local government or public authority in accordance with generally accepted principles of governmental accounting and the rules and regulations of the Commission.

(2) He shall disburse all funds of the local government or public authority in strict compliance with this Chapter and the local budget ordinance, and shall countersign and give his preaudit certificate to (i) all checks and drafts disbursing money, and (ii) all contracts, purchase orders, and other instruments or documents obligating the local government or public authority to disburse money.

(3) As often as may be requested by the governing board or the manager, he shall prepare and file with the board a statement of the financial condition of the local government or public authority.

(4) He shall receive and deposit all moneys accruing to the local government or public authority, or supervise the receipt and deposit of money by other duly authorized officers or employees.

(5) He shall maintain all records concerning the bonded debt of the local government or public authority, determine the amount of money that will be required for debt service during each fiscal year, and maintain all sinking funds.

(6) He shall supervise the investment of idle funds of the local government or public authority.

(7) He shall perform such other duties as may be assigned to him by law, by the manager, budget officer, or governing board, or by rules and regulations of the Commission.

All references in other portions of the General Statutes, local acts, or city charters to county, city, special district, or public authority accountant, treasurers, or other officials performing any of the duties conferred by this section on the finance officer shall be deemed to refer to the finance officer.

(b) Except as otherwise provided by law, all checks or drafts on an official depository, and all other instruments or documents converting demand deposits, time deposits, investment securities, or other assets into cash, negotiable instruments, or any other form of deposit or investment shall be signed by the finance officer and countersigned by another official of the local government or public

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authority designated for this purpose by the governing board. If the board makes no other designation, the chairman of the board or chief executive officer of the local government or public authority shall countersign these instruments and documents.

(c) The Local Government Commission has authority to issue rules and regulations governing procedures for the receipt, deposit, investment, transfer, and disbursement of money and other assets by units of local government and public authorities, may inquire into and investigate the internal control procedures of a local government or public authority, and may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements or mishandling of public moneys. (1971, c. 780, s. 1.)

§ **159-26. Accounting system.**—The finance officer shall maintain an accounting system designed to show in detail the amount of estimated revenue of each fund anticipated from each source specified in the budget ordinance as originally adopted and subsequently amended, the amount of revenue collected, and the uncollected balance thereof. The accounting system shall also be designed to show in detail the amount appropriated for each category of expenditure in the budget ordinance as originally adopted and subsequently amended, the amount of expenditures charged against each appropriation, the encumbrances outstanding against each appropriation, and the unencumbered balance to the credit of each appropriation. In addition, the accounting system shall be so designed that the true financial condition of the local government or public authority can be ascertained therefrom. The Commission may prescribe rules and regulations having the force of law as to features of accounting systems to be maintained by local governments and public authorities. Such rules and regulations may be varied according to the size of the local government or public authority, or any other criteria reasonably related to the complexity of the fiscal operations involved. (1971, c. 780, s. 1.)

§ **159-27. Distribution of tax collections among funds according to levy.**—(a) Property tax collections shall be distributed among the appropriate funds, according to the levy, at least monthly.

(b) Taxes collected during the current fiscal year, that were levied in any one of the two immediately preceding fiscal years, shall be distributed to the appropriate funds according to the levy of the fiscal year in which they were levied. If any fund for which such taxes were levied is not being maintained in the current fiscal year, the proportionate share of the tax that would have been distributed to the discontinued fund shall be allocated (i) to the fund from which the activity or function for which the tax was levied is then being financed, or (ii) to the general fund if the activity or function for which the tax was levied is no longer being performed.

(c) Taxes collected during the current fiscal year, that were levied in any prior fiscal year other than one of the two immediately preceding fiscal years, may be distributed in the discretion of the governing board either (i) to the general fund, or (ii) in accordance with subsection (b) of this section. This subsection shall not repeal any portion of a local act or city charter inconsistent herewith and in effect on July 1, 1973. (1971, c. 780, s. 1.)

§ **159-28. Preaudit of disbursements.**—(a) No bill or claim against a local government or public authority may be paid unless it has been approved by the officer or employee charged with the duty of administering that portion of the budget ordinance to which it is to be charged. No bill or claim may be paid in any form other than a check or draft on an official depository designated in accordance with G.S. 159-31. No check or draft drawn on a local government or public authority depository shall be valid unless it bears upon its face a certificate signed by the finance officer in substantially the following form: "Provision for the payment of this check (or draft) has been made by an appropriation duly made or bonds or notes duly authorized, pursuant to the Local Government Budget and Fiscal Control Act." Certificates in the form prescribed by G.S. 153-131 or G.S. 160-411.1, as those sections read on June 30, 1973, shall be sufficient.

The governing board of the local government or public authority may provide by appropriate resolution or ordinance for the use of facsimile signature machines or signature stamps in signing checks and drafts. The governing board shall charge the finance officer or some other bonded officer or employee with the custody of these machines, stamps, or signature plates, and he and the sureties on his official bond shall be liable for any illegal, improper, or unauthorized use of them.

The governing board may allow a bill or claim that has been disallowed by the finance officer, but only by formal resolution entered in the minutes together with the names of those voting in the affirmative. The resolution shall state the board's reasons for allowing the bill or claim and shall specify who is to sign the check or draft to be given in payment thereof. The check or draft shall not bear the certificate of preaudit required by this section, and shall be paid by the depository upon presentation of a certified copy of the resolution authorizing it. If payment of any such bill or claim results in a violation of any provisions of this Chapter, members of the governing board voting to allow the bill or claim shall be jointly and severally liable for the full amount of the check or draft.

(b) No contract or agreement requiring the payment of money, nor any requisition or purchase order for supplies or materials, may be made unless (i) an appropriation therefor appears in the budget ordinance and a sufficient unencumbered balance remains in the appropriation to pay the sums to fall due thereunder during the fiscal year, or (ii) provision for payment of the sums to fall due has been made by the sale of bonds or notes duly issued or authorized to be issued in accordance with law, or (iii) provision for the payment of the sums to fall due thereunder has been made by a grant or loan or binding commitment of funds to be granted or loaned to the local government or public authority by a State or federal agency. No contract, agreement, requisition, or purchase order requiring the payment of money by a local government or public authority shall be valid and enforceable unless it bears on its face a certificate signed by the finance officer in substantially the following form (adding the words in brackets for continuing contracts): "Provision for the payment of moneys to fall due under this agreement [within the current fiscal year] has been made by appropriation duly authorized, bonds or notes duly authorized, or binding grants or loans or grant or loan commitments duly made, as required by the Local Government Budget and Fiscal Control Act." Certificates in the form prescribed by G.S. 153-130 or G.S. 160-411 as those sections read on June 30, 1973, shall be sufficient. The certificate shall not make valid any contract or agreement not otherwise valid or made in violation of this Article.

(c) If the finance officer gives a false certificate to any check, draft, contract, agreement, requisition, or purchase order, he and the sureties on his official bond are liable for any sums illegally disbursed or committed thereby. If any officer or employee makes any contract or agreement on behalf of the local government or public authority without obtaining the finance officer's certificate thereon, or if any officer or employee pays out or causes to be paid out any funds in violation of this section, he is personally liable for the sums so disbursed or committed. (1971, c. 780, s. 1.)

§ 159-29. Finance officer's bond.—The finance officer shall give a true accounting and faithful performance bond with sufficient sureties in an amount to be fixed by the governing board, not less than ten thousand dollars ($10,000) nor more than one hundred thousand dollars ($100,000). The premium on the bond shall be paid by the local government or public authority. (1971, c. 780, s. 1.)

§ 159-30. Investment of idle funds.—(a) A local government or public authority may deposit at interest or invest all or part of the cash balance of any fund. The finance officer shall manage investments subject to whatever restrictions and directions the governing board may impose. The finance officer shall have the power to purchase, sell, and exchange securities on behalf of the governing board. The investment program shall be so managed that investments and deposits can be converted into cash when needed.

(b) Moneys may be deposited at interest in any bank or trust company in this State in the form of time deposits, certificates of deposit, or such other form of deposit as the Commission may approve. Investment deposits shall be secured as provided in G.S. 159-31(b).

(c) Moneys may be invested in the following classes of securities, and no others:

(1) Obligations of the United States of America.

(2) Obligations of any agency or instrumentality of the United States of America if the payment of interest and principal of such obligations is fully guaranteed by the United States of America.

(3) Obligations of the State of North Carolina.

(4) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the secretary may impose.

(5) Shares of any savings and loan association organized under the laws of this State and shares of any federal savings and loan association having its principal office in this State, to the extent that the investment in such shares is fully insured by the United States of America or an agency thereof or by any mutual deposit guaranty association authorized by the Commissioner of Insurance of North Carolina to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes.

(6) Obligations of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, and the Federal National Mortgage Association, the Banks for Cooperatives, and the Federal Land Banks, maturing no later than 18 months after the date of purchase.

(7) Any form of investment allowed by law to the State Treasurer.

(d) Investment securities may be bought, sold, and traded by private negotiation, and local governments and public authorities may pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program. Securities and deposit certificates shall be in the custody of the finance officer who shall be responsible for their safekeeping and for keeping accurate investment accounts and records.

(e) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or some other sound accounting principle. Interest earned on the deposit or investment of bond funds shall be deemed a part of the bond proceeds.

(f) Registered securities acquired for investment may be released from registration and transferred by signature of the finance officer. (1957, c. 864, s. 1; 1967, c. 798, ss. 1, 2; 1969, c. 862; 1971, c. 780, s. 1.)

§ 159-31. Selection of depository; deposits to be secured.—(a) The governing board of each local government and public authority shall designate as its official depositories one or more banks or trust companies in this State or, with the written permission of the secretary, a national bank located in another state. The names and addresses of the depositories shall be reported to the secretary. It shall be unlawful for any public moneys to be deposited in any place, bank, or trust company other than an official depository, except as permitted by G.S. 159-30(b).

(b) The amount of funds on deposit in an official depository or deposited at interest pursuant to G.S. 159-30(b) shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner, as may be prescribed by rule or regulation of the Local Government Commission. When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by a local government or public authority because of the default or insolvency of the depository. No security is required for the protection of funds remitted to and received by a bank or trust company acting as fiscal agent for the payment of principal and interest on bonds or notes, when the funds are remitted no more than 60 days prior to the maturity date. (1927, c. 146, s. 19; 1929, c. 37; 1931, c. 60, s. 32; c. 296, s. 7; 1935, c. 375, s. 1; 1939, c. 129, s. 1; c. 134; 1953, c. 675, s. 28; 1955, cc. 698, 724; 1971, c. 780, s. 1.)

§ **159-32. Daily deposits.**—Each officer and employee of a local government or public authority whose duty it is to collect or receive any taxes or other moneys shall deposit his collections and receipts daily. If the governing board gives it approval, deposits shall be required only when the moneys on hand amount to as much as two hundred fifty dollars ($250), but in any event a deposit shall be made on the last business day of the month. All deposits shall be made in an official depository, and shall be immediately reported to the finance officer by means of a duplicate deposit ticket. The finance officer shall audit at least monthly the accounts of any officer or employee collecting or receiving taxes or other moneys, and may prescribe the form and detail of these accounts. All collections and receipts by an officer or employee other than the finance officer shall be deposited in special clearing accounts and withdrawals therefrom shall be made only upon the order of the finance officer. (1927, c. 146, s. 19; 1929, c. 37; 1939, c. 134; 1955, cc. 698, 724; 1971, c. 780, s. 1.)

§ **159-33. Semiannual reports on status of deposits and investments.**—Each officer having custody of any funds of any local government or public authority shall report to the secretary on January 1 and July 1 of each year (or such other dates as he may prescribe) the amounts of funds then in his custody, the amounts of deposits of such funds in depositories, a list of all investment securities and time deposits held by the local government or public authority, and a description of the surety bonds or investment securities securing demand and time deposits. If the secretary finds at any time that any funds of any unit are not properly deposited or secured, or are invested in securities not eligible for investment, he shall notify the officer in charge of the funds of the failure to comply with law. Upon such notification the officer shall comply with the law within 30 days, except as to the sale of securities not eligible for investment which shall be sold within nine months at a price to be approved by the secretary. The Commission may extend the time for sale of ineligible securities, but no one extension may cover a period of more than one year. (1931, c. 60, s. 33; 1971, c. 780, s. 1.)

§ **159-34. Annual independent audit.**—Each unit of local government and public authority shall have its accounts audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Commission as qualified to audit local government accounts. The auditor shall be selected by and shall report directly to the governing board. The audit contract or agreement shall be in writing, shall include all its terms and conditions, and shall be submitted to the secretary for his approval as to form, terms and conditions. The terms and conditions of the audit contract shall include the scope of the audit, and the requirement that upon completion of the examination the auditor shall prepare a typewritten or printed report embodying financial statements and his opinion and comments relating thereto. The finance officer shall file a copy of the audit report with the secretary, and shall submit all bills or claims for audit fees and costs to the secretary for his approval. It shall be unlawful for any unit of local government or public authority to pay or permit the payment of such bills or claims without this approval. Each officer and employee of the local government or local public authority having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce all books and records requested by the auditor and shall divulge such information relating to fiscal affairs as he may request. If any member of a governing board or any other public officer or employee shall conceal, falsify, or refuse to deliver or divulge any books, records, or information, with an intent thereby to mislead the auditor or impede or interfere with the audit, he is guilty of a misdemeanor and upon conviction thereof may be fined not more than one thousand dollars ($1,000), or imprisoned for not more than one year, or both, in the discretion of the court. (1971, c. 780, s. 1.)

§ **159-35. Secretary of Local Government Commission to notify units of debt service obligations.**—(a) The secretary shall mail to each local government and public authority not later than May 1 of each year a statement of its debt service obligations for the coming fiscal year, including sums to be paid into sinking funds.

(b) The secretary shall mail to each local government and public authority not later than 30 days prior to the due date of each installment of principal or interest on outstanding debt, a statement of the amount of principal and interest so payable, the due date, the place to which the payments should be sent, and a summary of the legal penalties for failing to meet debt service obligations. (1931, c. 60, ss. 36, 37; 1971, c. 780, s. 1.)

§ **159-36. Failure of local government to levy debt service taxes or provide for payment of debt.**—If any local government or public authority fails or refuses to levy taxes or allocate other revenues in an amount sufficient to meet all installments of principal and interest falling due on its debt during the budget year, or to adequately maintain its sinking funds, the Commission shall enter an order directing and commanding the governing board of the local government or public authority to enact a budget ordinance levying the necessary taxes or raising the necessary revenue by whatever means are legally available. If the governing board shall fail or refuse to comply with the Commission's order within 10 days, the order shall have the same legal force and effect as if the actions therein commanded had been taken by the governing board, and the appropriate officers and employees of the local government or public authority shall proceed to collect the tax levy or implement the plan for raising the revenue to the same extent as if such action had been authorized and directed by the governing board. Any officer, employee, or member of the governing board of any local government or public authority who willfully fails or refuses to implement an order of the Local Government Commission issued pursuant to this section forfeits his office or position. (1971, c. 780, s. 1.)

§ **159-37. Reports on status of sinking funds.** — Each unit or public authority maintaining any sinking fund shall transmit to the secretary upon his request financial reports on the status of the fund and the means by which moneys are obtained for deposit therein. The secretary shall determine from this information whether the sinking funds are being properly maintained, and if he shall find that they are not, he shall order the unit to take such action as may be necessary to maintain the funds in accordance with law. (1931, c. 60, s. 31; 1971, c. 780, s. 1.)

§ **159-38. Local units authorized to accept their bonds in payment of certain claims and judgments.** — Any unit of local government or public authority may accept its own bonds, at par, in settlement of any claim or judgment that it may have against any person, firm, corporation, or association due to funds held in an insolvent bank, trust company, or savings and loan association. (1933, c. 376; 1971, c. 780, s. 1.)

§§ **159-39 to 159-42:** Reserved for future codification purposes.

SUBCHAPTER IV. LONG-TERM FINANCING.

ARTICLE 4.

Local Government Bond Act.

Part 1. Operation of Article.

§ **159-43. Short title; legislative intent.**—(a) This Article may be cited as "The Local Government Bond Act."

(b) It is the intent of the General Assembly by enactment of this Article to prescribe a uniform system of limitations upon and procedures for the exercise by all units of local government in North Carolina of the power to borrow money secured by a pledge of the taxing power. To this end, all special, local, or private acts in effect as of July 1, 1973, authorizing the issuance of bonds or notes secured by a pledge of the taxing power and prescribing procedures therefor are hereby repealed, and no special, local, or private act taking effect after July 1, 1973, shall be construed to modify, amend, or repeal any portion of this Article unless it shall expressly so provide by specific reference to the appropriate section of this Article. (1971, c. 780, s. 1.)

§ **159-44. Definitions.**—The words and phrases defined in this section shall have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

(1) "Finance officer" means the officer performing the duties of finance officer of a unit of local government pursuant to G.S. 159-24 of the Local Government Budget and Fiscal Control Act.

(2) "Governing board" or "board" means the governing body of a unit of local government.

(3) "Sinking fund" means a fund held for the retirement of term bonds.

(4) "Unit," "unit of local government," or "local government" means counties; cities, towns, and incorporated villages; sanitary districts; mosquito control districts; hospital districts; metropolitan sewerage districts; and watershed improvement districts.

(5) "Utility or public service enterprise" includes:

  i. Electric power transmission and distribution systems;
  ii. Water supply facilities and distribution systems;
  iii. Sewage collection and disposal systems;
  iv. Gas transmission and distribution systems;
  v. Public transportation systems, including but not limited to bus lines, ferries, and mass transit systems;
  vi. Solid waste collection and disposal systems and facilities;

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vii. Cable television systems;
viii. Off-street parking facilities and systems;
ix. Public auditoriums, coliseums, stadiums and convention centers;
x. Airports; and
xi. Hospitals and other health-related facilities. (1971, c. 780, s. 1.)

§ **159-45. All general obligation bonds subject to Local Government Bond Act.**—No unit of local government in this State shall have authority to enter into any contract or agreement, whether oral or written, whereby it borrows money and makes an express or implied pledge of its power to levy taxes as security for repayment of the loan, except by the issuance of its bonds in accordance with the limitations and procedures prescribed in this Article or by the issuance of its negotiable notes in accordance with the limitations and procedures prescribed in Article 9 of this Chapter. (1971, c. 780, s. 1.)

§ **159-46. Faith and credit pledged.**—The faith and credit of the issuing unit are hereby pledged for the payment of the principal of and interest on all bonds issued under this Article according to their terms, and the power and obligation of the issuing unit to levy taxes and raise other revenues for the prompt payment of installments of principal and interest or for the maintenance of sinking funds shall be unrestricted as to rate or amount, notwithstanding any other provisions of law whether general, special, local, or private. (1971, c. 780, s. 1.)

§ **159-47. Additional security for utility or public service enterprise bonds.**—(a) The revenues of a utility or public service enterprise owned or leased by a unit of local government shall be applied in accordance with the following priorities:

(1) First, to pay the operating, maintenance, and capital outlay expenses of the utility or enterprise.
(2) Second, to pay when due the interest on and principal of outstanding bonds issued for capital projects that are or were a part of the utility or enterprise.
(3) Third, for any other lawful purpose.

(b) In the discretion of the governing board of the issuing unit, the bond order may pledge the revenues (or any portion of the revenues) of a utility or public service enterprise to the payment of the interest on and principal of bonds issued under this Article to finance capital projects that are to become a part of the utility or enterprise.

(c) In the discretion of the governing board of the issuing unit, a bond order authorizing the issuance of bonds under this Article to finance capital projects that are to become a part of a utility or public service enterprise owned or leased by the issuing unit may state that the revenues of the utility or enterprise may be pledged to the payment of the interest on and principal of the bonds if and to the extent that the governing board of the unit shall thereafter determine by resolution (prior to the issuance of the bonds), and that a tax sufficient to pay the principal of and interest on the bonds shall be annually levied and collected by the issuing unit on all taxable property within its taxing jurisdiction, but that in the event that any revenues of the utility or enterprise shall be pledged to the payment of the bonds, the tax may be reduced by the amount of utility or enterprise revenues available for the payment of the principal and interest. A pledge of utility or enterprise revenues pursuant to this subsection shall be made by resolution of the governing board of the issuing unit after the bond order is adopted and before bonds are issued thereunder.

(d) When a pledge of utility or enterprise revenues is made pursuant to this section, the issuing unit shall have, with respect to the utility or enterprise whose revenues are pledged, all of the powers set out in G.S. 159-83 and G.S. 159-89. (1971, c. 780, s. 1.)

§ **159-48. For what purposes bonds may be issued.**—Each unit of local government is hereby authorized to borrow money and issue its bonds under this Article in evidence thereof for any one or more of the following purposes:

(1) For any purpose for which it may raise or appropriate money, except for current expenses.
(2) To suppress riots, insurrections, or any extraordinary breach of law and order.
(3) To supply an unforeseen deficiency in the revenue, when taxes actually received or collected during a fiscal year fall below collection estimates made in the annual budget ordinance within the limitations prescribed in G.S. 159-13.
(4) To meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor.
(5) For counties, to finance the cost of the octennial revaluation of real property for taxation.
(6) To refund outstanding revenue bonds or revenue bond anticipation notes.
(7) To fund or refund any valid, existing debt of the unit.

The cost of preparing, issuing, and marketing bonds shall be deemed a part of the purpose for which the bonds are issued. (1917, c. 138, s. 16; 1919, c. 178, s. 3 (16); C. S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, ss. 48, 54; 1933, c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; 1939, c. 231, ss. 1, 2(c); 1943, c. 13; 1945, c. 403; 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 856, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1; 1971, c. 780, s. 1.)

§ **159-49. When a vote of the people is required.**—Bonds may be issued under this Article only if approved by a vote of the qualified voters of the issuing unit as provided in this Article, except that voter approval shall not be required for:

(1) Funding or refunding bonds.
(2) Bonds issued for the purpose of suppressing riots or insurrections, or any extraordinary breach of law and order.
(3) Bonds issued to supply an unforeseen deficiency in the revenue.
(4) Bonds issued to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor.
(5) Bonds issued by a county or city for any purpose authorized by G.S. 159-48(1), (5), or (6) in an aggregate principal sum not exceeding two thirds of the amount by which the outstanding general obligation bonded debt of the issuing county or city has been reduced during the next preceding fiscal year. Pursuant to Article V, § 4(2)(f) of the Constitution, the General Assembly hereby declares that the purposes authorized by G.S. 159-48(1), (5), and (6) are purposes for which bonds may be issued without a vote of the people, to the extent of two thirds of the amount by which the outstanding debt of the issuing county or city was reduced in the last preceding fiscal year. (1971, c. 780, s. 1.)

Part 2. Procedure for Issuing Bonds.

§ **159-50. Notice of intent to make application for issuance of voted bonds; objection by citizens and taxpayers.**—When a unit of local government proposes to issue bonds that must be approved by a vote of the people, it

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shall first publish a notice of its intent to make application to the Commission for approval of the issue. The notice shall be published once not less than 10 days before the application is filed. The notice shall state (i) that the board intends to file an application with the Commission for approval of a bond issue, (ii) in brief and general terms the purpose of the proposed issue, (iii) the maximum amount of bonds to be issued, and (iv) that any citizen or taxpayer of the issuing unit may, within seven days after the date of the publication, file with the governing board and the Commission a statement of any objections he may have to the issue. The Commission may prescribe the form of the notice.

Any citizen or taxpayer of the issuing unit who objects to the proposed bond issue in whole or in part may, within seven days from the date of publication of the notice, file a written statement of his objections with the board and the Commission. The statement shall set forth each objection to the proposed bond issue and shall contain the name and address of the person filing it. The Commission shall consider the statement of objections along with the application and shall notify the objector and the board of its disposition of each objection.

Failure to comply with this section shall not affect the validity of any bonds otherwise issued in accordance with the law. This section shall not apply to bonds that need not be submitted to a vote of the people. (1953, c. 1121; 1971, c. 780, s. 1.)

§ 159-51. Application to Commission for approval of bond issue; preliminary conference; acceptance of application.—No bonds may be issued under this Article unless the issue is approved by the Local Government Commission. The governing board of the issuing unit shall file an application for Commission approval of the issue with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed bonds and the financial condition of the issuing unit as the secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference to consider the proposed bond issue.

After an application in proper form has been filed, and after a preliminary conference if one is required, the secretary shall notify the unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the unit has complied with this section. (1953, c. 1121; 1971, c. 780, s. 2.)

§ 159-52. Approval of application by Commission.—(a) In determining whether a proposed bond issue shall be approved, the Commission may consider:

(1) Whether the project to be financed from the proceeds of the bond issue is necessary or expedient.
(2) The nature and amount of the outstanding debt of the issuing unit.
(3) The unit's debt management procedures and policies.
(4) The unit's tax and special assessments collection record.
(5) The unit's compliance with the Local Government Budget and Fiscal Control Act.
(6) Whether the unit is in default in any of its debt service obligations.
(7) The unit's present tax rates, and the increase in tax rate, if any, necessary to service the proposed debt.
(8) The unit's appraised and assessed value of property subject to taxation.
(9) The ability of the unit to sustain the additional taxes necessary to service the debt.

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(10) The ability of the Commission to market the proposed bonds at reasonable interest rates.

(11) If the proposed issue is for a utility or public service enterprise, the probable net revenues of the project to be financed and the extent to which the revenues of the utility or enterprise, after addition of the revenues of the project to be financed, will be sufficient to service the proposed debt.

(12) Whether the amount of the proposed debt will be adequate to accomplish the purpose for which it is to be incurred.

The Commission may inquire into and give consideration to any other matters which it may believe to have a bearing on whether the issue should be approved.

(b) The Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

(1) That the proposed bond issue is necessary or expedient.

(2) That the amount proposed is adequate and not excessive for the proposed purpose of the issue.

(3) That the unit's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.

(4) That the increase in taxes, if any, necessary to service the proposed debt will not be excessive.

(5) That the proposed bonds can be marketed at reasonable rates of interest.

If the Commission tentatively decides to deny the application because it is of the opinion that any one or more of these conclusions cannot be supported from the information presented to it, it shall so notify the unit filing the application. If the unit so requests, the Commission shall hold a public hearing on the application at which time any interested persons shall be heard. The Commission may appoint a hearing officer to conduct the hearing, and to present a summary of the testimony and his recommendations for the Commission's consideration. (1931, c. 60, ss. 12, 13; 1971, c. 780, s. 1.)

§ **159-53. Order approving or disapproving an application.**—(a) After considering an application, and conducting a public hearing thereon if one is requested under G.S. 159-52(b), the Commission shall enter its order either approving or denying the application. An order approving an issue shall not be regarded as an approval of the legality of the bonds in any respect.

(b) If the Commission shall enter an order denying an application, the proceedings under this Subchapter shall be at an end. (1931, c. 60, s. 14; 1971, c. 780, s. 1.)

§ **159-54. The bond order.**—After or at the same time the application is filed and accepted for submission to the Commission, a bond order shall be introduced before the governing board of the issuing unit. The bond order shall state:

(1) Briefly and generally, the purpose for which the bonds are to be issued, but not more than one purpose may be stated. For funding or refunding bonds a brief description of the debt to be funded or refunded shall be sufficient.

(2) The maximum aggregate principal amount of the bonds.

(3) That taxes will be levied in an amount sufficient to pay the principal and interest of the bonds.

(4) The extent, if any, to which utility or enterprise revenues are, or may be, pledged to payment of interest on and principal of the bonds pursuant to G.S. 159-47.

(5) That a sworn statement of debt has been filed with the clerk and is open to public inspection.

(6) If the bonds are to be approved by the voters, that the bond order will take effect when approved by the voters.

(7) If the bonds are not to be submitted to the voters, that the bond order will take effect 30 days after its publication following final passage, unless it is petitioned to a vote of the people as provided in G.S. 159-60, and that in that event the order will take effect when approved by the voters.

When the bond order is introduced, the board shall fix the time and place for a public hearing thereon.

In stating the purpose of a bond issue, the bond order need not specify the location of any project to be financed thereby, nor the material of construction or any other details of the project beyond the general purpose. (1917, c. 138, s. 17; 1919, c. 178, s. 3 (17); c. 285, s. 2; C. S., s. 2938; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 9; 1931, c. 60, ss. 49, 55; 1933, c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; 1949, c. 497, ss. 1, 3; 1957, c. 856, s. 2; 1971, c. 780, s. 1.)

§ **159-55. Sworn statement of debt; debt limitation.**—(a) After the bond order has been introduced and before the public hearing thereon, the finance officer (or some other officer designated by the governing board for this purpose) shall file with the clerk a statement showing the following:

(1) The gross debt of the unit, excluding therefrom debt incurred or to be incurred in anticipation of the collection of taxes or in anticipation of the sale of bonds other than funding and refunding bonds. The gross debt (after exclusions) is the sum of (i) outstanding debt evidenced by bonds or notes, (ii) bonds or notes authorized by orders or resolutions introduced but not yet adopted, (iii) unissued bonds or notes authorized by adopted orders, and (iv) outstanding debt not evidenced by bonds or notes.

(2) The deductions to be made from gross debt in computing net debt. The following deductions are allowed:

  a. Funding and refunding bonds authorized by orders introduced but not yet adopted.
  b. Funding and refunding bonds authorized but not yet issued.
  c. The amount of money held in sinking funds or otherwise for the payment of any part of the principal of gross debt other than debt incurred for water, gas, electric light or power purposes, or sanitary sewer purposes (to the extent that the bonds are deductible under subsection (b) of this section), or two or more of these purposes.
  d. The amount of bonded debt included in gross debt and incurred, or to be incurred, for water, gas, or electric light or power purposes, or any two or more of these purposes.
  e. The amount of bonded debt included in the gross debt and incurred, or to be incurred, for sanitary sewer system purposes to the extent that the debt is made deductible by subsection (b) of this section.
  f. The amount of uncollected special assessments theretofore levied for local improvements for which any part of the gross debt was or is to be incurred, to the extent that the assessments will be applied, when collected, to the payment of any part of the gross debt.
  g. The amount, as estimated by the governing board of the issuing unit or an officer designated by the board for this purpose, of special assessments to be levied for local improvements for

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which any part of the gross debt was or is to be incurred, to the extent that the special assessments, when collected, will be applied to the payment of any part of the gross debt.

(3) The net debt of the issuing unit, being the difference between the gross debt and deductions.

(4) The appraised value of property subject to taxation by the issuing unit before the application of any assessment ratio. The appraised value of property subject to taxation by the issuing unit is the value from which the assessed value last fixed for taxation by the issuing unit was computed, as revealed by the county tax records and certified to the issuing unit by the county tax supervisor.

(5) The percentage that the net debt bears to the appraised value of property subject to taxation by the issuing unit.

(b) Debt incurred or to be incurred for sanitary sewer system purposes is deductible from gross debt when the combined revenues of the water system and the sanitary sewer system (whether or not the water and sewer system are operated separately or as a consolidated system) were sufficient to pay all operating, capital outlay, and debt service expenditures attributable to both systems in each of the three complete fiscal years immediately preceding the date on which the sworn statement of debt is filed. For the purposes of this subsection, the "revenues" of a water system and a sanitary sewer system include:

(1) Rates, fees, rentals, charges, and other receipts and income derived from or in connection with the system.

(2) Fees, rents, or other charges collected from other offices, agencies, institutions, and departments of the issuing unit at rates not in excess of those charged to other consumers, customers, or users.

(3) Appropriations from the fund balance of the prior fiscal year from the fund or funds established to account for the revenues and expenditures of the water system or sewer system pursuant to G.S. 159-13(a) of the Local Government Budget and Fiscal Control Act.

Before the sworn statement of debt is filed, the secretary shall determine to what extent debt incurred or to be incurred for sanitary sewer system purposes qualifies for deduction from gross debt pursuant to this subsection, and shall give his certificate to that effect. The secretary's certificate shall be filed with and deemed a part of the sworn statement of debt. The secretary's certificate shall be conclusive in the absence of fraud.

(c) No bond order shall be adopted unless it appears from the sworn statement of debt filed in connection therewith that the net debt of the unit does not exceed eight percent (8%) of the appraised value of property subject to taxation by the issuing unit before the application of any assessment ratio as determined under subsection (a)(4) of this section. This limitation shall not apply to:

(1) Funding and refunding bonds.

(2) Bonds issued for water, gas, or electric power purposes, or two or more of these purposes.

(3) Bonds issued for sanitary sewer system purposes when the bonds are deductible pursuant to subsection (b) of this section.

(4) Bonds issued for sanitary sewers, sewage disposal, or sewage purification plants when the construction of these facilities has been ordered by the Board of Water and Air Resources, which Board is hereby authorized to make such an order, or by a court of competent jurisdiction.

(5) Bonds or notes issued for erosion control purposes.

(6) Bonds or notes issued for the purpose of erecting jetties or other protective works to prevent encroachment by the ocean, sounds, or other

bodies of water. (1917, c. 138, s. 19; 1919, c. 178, s. 3 (19); c. 285, s. 4; C. S., s. 2943; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, ss. 13, 14; c. 102, s. 1; 1931, c. 60, s. 51; 1933, c. 259, s. 1; c. 321; Ex. Sess. 1938, c. 3; 1955, c. 1045; 1959, c. 779, s. 10; 1967, c. 892, s. 4; 1969, c. 1092; 1971, c. 780, s. 1.)

§ **159-56. Publication of bond order as introduced.**—After the introduction of the bond order, the clerk shall publish it once with the following statement appended:

"The foregoing order has been introduced and a sworn statement of debt has been filed under the Local Government Bond Act showing the appraised value of the [issuing unit] to be $............ and the net debt thereof, including the proposed bonds, to be $.......... A tax will [may] be levied to pay the principal of and interest on the bonds if they are issued. Anyone who wishes to be heard on the questions of the validity of the bond order and the advisability of issuing the bonds may appear at a public hearing or an adjournment thereof to be held at ....

....
Clerk"

(1927, c. 81, s. 16; 1971, c. 780, s. 1.)

§ **159-57. Hearing; passage of bond order.**—On the date fixed for the public hearing, which shall be not earlier than six days after the date of publication of the bond order as introduced, the board shall hear anyone who may wish to be heard on the question of the validity of the order or the advisability of issuing the bonds. The hearing may be adjourned from time to time.

After the hearing, (and on the same day as the hearing, if the board so desires) the board may pass the order as introduced, or as amended. No amendment may increase the amount of bonds to be issued, nor substantially change the purpose of the issue. If the board wishes to increase the amount of bonds to be issued, or to substantially change the purpose of the issue, a new proceeding under this Article is required.

The provisions of any city charter, general law, or local act to the contrary notwithstanding, a bond order may be introduced at any regular or special meeting of the governing board and adopted at any such meeting by a simple majority of those present and voting, a quorum being present, and need not be published or subjected to any procedural requirements governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Subchapter. Bond orders shall not be subject to the provisions of any city charter or local act concerning initiative and referendum. (1927, c. 81, s. 17; 1953, c. 1065, s. 1; 1971, c. 780, s. 1.)

§ **159-58. Publication of bond order as adopted.**—After adoption, the clerk shall publish the bond order once, with the following statement appended:

"The foregoing order was adopted on the ...... day of ...., 19...., and is hereby published this ...... day of ...., 19..... Any action or proceeding questioning the validity of the order must be begun within 30 days after the date of publication of this notice.

....
Clerk"

(1917, c. 138, s. 20; 1919, c. 49, s. 1; c. 178, s. 3 (20); C. S., s. 2944; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 19; 1971, c. 780, s. 1.)

§ **159-59. Limitation of action to set aside order.**—Any action or proceeding in any court to set aside a bond order, or to obtain any other relief, upon

(This Chapter is not effective until July 1, 1973.)

the ground that the order is invalid, must be begun within 30 days after the date of publication of the bond order as adopted. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of the order shall be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section. (1917, c. 138, s. 20; 1919, c. 49, s. 1; c. 178, s. 3 (20); C. S., s. 2945; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 20; 1971, c. 780, s. 1.)

§ **159-60. Petition for referendum on bond issue.**—A petition demanding that a bond order be submitted to the voters may be filed with the clerk within 30 days after the date of publication of the bond order as introduced. The petition shall be in writing, and shall be signed by a number of voters of the issuing unit equal to not less than ten percent (10%) of the total number of voters registered to vote in elections of the issuing unit according to the most recent figures certified by the State Board of Elections. The residence address of each signer shall be written after his signature. The petition need not contain the text of the order to which it refers, and need not be all on one sheet.

The clerk shall investigate the sufficiency of the petition and present it to the governing board, with a certificate stating the results of his investigation. The governing board, after hearing any taxpayer who may request to be heard, shall thereupon determine the sufficiency of the petition, and its determination shall be conclusive.

This section shall not apply to funding or refunding bonds. (1917, c. 138, s. 21; 1919, c. 49, ss. 1, 2; c. 178, s. 3 (21); C. S., s. 2947; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 20; c. 102, s. 2; 1971, c. 780, s. 1.)

§ **159-61. Bond referenda; majority required; notice of referendum; form of ballot; canvass.**—(a) If a bond order is to take effect upon approval of the voters, the affirmative vote of a majority of those who vote thereon shall be required.

(b) The date of a bond referendum shall be fixed by the governing board, but shall not be more than one year after adoption of the bond order. The governing board may call a special referendum for the purpose of voting on a bond issue on any day, including the day of any regular or special election held for another purpose (unless the law under which the bond referendum or other election is held specifically prohibits submission of other questions at the same time). A special bond referendum may not be held within 30 days before or 10 days after a primary, general election, regular municipal election, special election called by act of the General Assembly, or any other special referendum or election already validly called or scheduled by law at the time the bond referendum is called. The clerk shall mail or deliver a certified copy of the resolution calling a special bond referendum to the board of elections that is to conduct it within three days after the resolution is adopted, but failure to observe this requirement shall not in any manner affect the validity of the referendum or bonds issued pursuant thereto. Bond referenda shall be conducted by the board of elections conducting regular elections of the county, city, or special district. In fixing the date of a bond referendum, the governing board shall consult the board of elections in order that the referendum shall not unduly interfere with other elections already scheduled or in process. Several bond orders or other matters may be voted upon at the same referendum.

(c) The clerk shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the maximum amount of the proposed bonds, the purpose of the bonds, a statement that taxes will or may be levied for the payment thereof, and a statement as to the last day for registration for the referendum under the election laws then in effect.

(d) The form of the question as stated on the ballot shall be in substantially the following words:

"Shall the order authorizing $........ in bonds for (briefly stating the purpose) be approved?

[ ] YES
[ ] NO"

(e) The board of elections shall canvass the referendum and certify the results to the governing board. The governing board shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended:

"Any action or proceeding challenging the regularity or validity of this bond referendum must be begun within 30 days after ...."
(date of publication)

The statement of results shall be filed in the clerk's office and inserted in the minutes of the board. (1917, c. 138, s. 22; 1919, c. 178, s. 3 (22); c. 291; C. S., s. 2948; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, ss. 22, 23, 25-27, 29; 1949, c. 497, ss. 2, 4; 1953, c. 1065, ss. 1, 2; 1971, c. 780, s. 1.)

§ **159-62. Limitation on actions contesting validity of bond referenda.**—Any action or proceeding in any court to set aside a bond referendum, or to obtain any other relief, upon the ground that the referendum is invalid or was irregularly conducted, must be begun within 30 days after the publication of the statement of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section. (1917, c. 138, s. 22; 1919, c. 178, s. 3 (22); c. 291; C. S., s. 2948; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 30; 1949, c. 497, s. 4; 1953, c. 1065, s. 2; 1971, c. 780, s. 1.)

§ **159-63. Repeal of bond orders.**—A bond order may be repealed at any time before bonds or bond anticipation notes are issued thereunder. No referendum is required on the repeal of any bond order, nor is a petition for any such referendum permitted. (1971, c. 780, s. 1.)

§ **159-64. Within what time bonds may be issued.**—Bonds may be issued under a bond order at any time within five years after the order takes effect. When the issuance of bonds under any bond order is prevented or prohibited by any order of any court, the period of time within which bonds may be issued under the bond order in litigation shall be extended by the length of time elapsing between the date of institution of the action or proceeding and the date of its final disposition. The General Assembly may at any time prior to the expiration of the maximum time period herein provided extend the time for issuing bonds under bond orders.

When any such extension is granted, no further approval of the voters shall be required. (1917, c. 138, s. 24; 1919, c. 178, s. 3 (24); C. S., s. 2950; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 32; 1939, c. 231, ss. 1, 2(d); 1947, c. 510, ss. 1, 2; 1949, c. 190, ss. 1, 2; 1951, c. 439, ss. 1, 2; 1953, c. 693, ss. 1, 3; 1955, c. 704, ss. 1, 2; 1969, c. 99; 1971, c. 780, s. 1.)

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§ **159-65. Order fixing the details of the bonds.**—After the bond order has been adopted, the board shall adopt an order fixing the details of the bonds. In fixing details of the bonds, the board is subject to these restrictions and directions:

(1) The maturity dates shall not exceed the maximum periods of usefulness prescribed by the Commission pursuant to G.S. 159-122.

(2) Bonds authorized by two or more bond orders may be conslidated into a single issue.

(3) Bonds of each issue shall mature in annual installments, the first of which shall be payable not more than three years after the date of the bonds, and the last within the maximum maturity period prescribed by regulation of the Commission under G.S. 159-122.

(4) No installment of any issue may be more than four times as great in amount as the smallest installment of the same issue.

(5) Bonds of each issue may be issued from time to time in series with different provisions for each series. Each series shall be deemed a separate issue for the purposes of this section.

(6) No bonds may be made payable on demand, but any bond may be made subject to redemption prior to maturity, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated therein. When any such bond shall have been validly called for redemption and provision shall have been made for the payment of the principal thereof, any redemption premium, and the interest thereon accrued to the date of redemption, interest thereon shall cease.

(7) The bonds may bear interest at such rate or rates, payable semiannually or otherwise, may be in such denominations, and may be made payable in such kind of money and in such place or places within or without the State of North Carolina, as the board may determine.

Subdivisions (3) and (4) of this section shall not apply to bonds purchased by a State or federal agency. (1917, c. 138, s. 25; 1919, c. 178, s. 3 (25); C. S., s. 2951; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; 1951, c. 440, s. 1; 1953, c. 1206, s. 3; 1969, c. 686; 1971, c. 780, s. 1.)

§§ **159-66 to 159-71**: Reserved for future codification purposes.

Part 3. Funding and Refunding Bonds.

§ **159-72. Purposes for which funding and refunding bonds may be issued; debt defined.**—Any unit of local government may issue funding or refunding bonds to pay or refinance any valid outstanding debt of the issuing unit when the debt is payable at the time of the passage of the bond order or within one year thereafter, or when the debt is to be cancelled prior to its maturity and simultaneously with the issuance of the funding or refunding bonds. As used in this part, "debt" means all valid and enforcible debts of the issuing unit without regard to the purpose for which they were incurred, including but not limited to debts evidenced by bonds, bond anticipation notes, or tax anticipation notes; judgments; unpaid interest; and the principal and interest of funding or refunding bonds.

Except as expressly modified in this Part, funding and refunding bonds shall be issued under the limitations and procedures set out in Parts 1 and 2 of this Article. (1917, c. 138, s. 16; 1919, c. 178, s. 3 (16); C. S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, ss. 48, 54; 1933, c. 257, ss. 2-4; c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; c. 484; 1939, c. 231, ss. 1, 2(c), 4(b); 1941, c. 147; 1943, c. 13; 1945, c. 403; 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 856, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1; 1971, c. 780, s. 1.)

§ **159-73. Financing or refinancing agreements.** — Each unit of local government is authorized to enter into agreements with the holders of its outstanding debts for the settlement, adjustment, funding, refunding, financing, or refinancing of the debt. Such an agreement may contain any provisions not inconsistent with law and before the unit may enter into it, it must be approved by the Commission. (1971, c. 780, s. 1.)

§ **159-74. Test cases testing validity of funding or refunding bonds.**—At any time after the procedure for authorizing the issuance of funding or refunding bonds has been completed, but before the issuance of the bonds, the issuing unit may institute an action in the Superior Court Division of the General Court of Justice in the county in which all or any part of the unit lies, to determine the validity of the bonds and the validity of the means of payment provided therefor. The action shall be in rem, and shall be against all of the owners of taxable property within the unit and all citizens residing in the unit, but it shall not be necessary to name each such owner or citizen in the summons or complaint. Jurisdiction of all parties defendant shall be acquired by publication of a summons once a week for three successive weeks, and jurisdiction shall be complete within 20 days after the date of the last publication. Any interested party may intervene in the action. Except as otherwise provided by this section, the action shall be governed by the Rules of Civil Procedure. (1931, c. 186, ss. 4, 5; 1935, c. 290, ss. 1, 2; 1937, c. 80; 1971, c. 780, s. 1.)

§ **159-75. Judgment validating issue; costs of the action.**—A final decree of the General Court of Justice validating funding or refunding bonds or the financing or refinancing agreement shall be conclusive as to the validity of the bonds or the agreement.

The costs of any action brought under G.S. 159-76 shall be borne by the issuing unit, including a reasonable attorney's fee for the attorney assigned by the court to defend the interests of the citizens and taxpayers in general. (1931, c. 186, ss. 6, 7; 1935, c. 290, s. 3; 1971, c. 780, s. 1.)

§ **159-76. Validation of bonds and notes issued before March 26, 1931.**—All bonds and notes issued before March 26, 1931, for which the issuing unit received an amount of money not less than the face amount of the bonds or notes and the proceeds of which have been spent for public purposes, and all bonds and notes subsequently issued to refund all or any portion of those bonds, are hereby validated notwithstanding any lack of statutory authority or failure to observe any statutory provisions concerning the issuance of the bonds or notes. This section shall not validate any bonds or notes, the proceeds of which have been lost because of the failure of a bank. (1931, c. 186, s. 2; 1971, c. 780, s. 1.)

§§ **159-77 to 159-79**: Reserved for future codification purposes.

ARTICLE 5.

Revenue Bonds.

§ **159-80. Short title.**—This Article may be cited as "The Local Government Revenue Bond Act." (1971, c. 780, s. 1.)

§ **159-81. Definitions.** — The words and phrases defined in this section shall have the meanings indicated when used in this Article:

(1) "Municipality" means a county, city, town, incorporated village, sani-

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tary district, metropolitan sewage district, water and sewer authority, hospital authority, hospital district, parking authority, and airport authority but not any other form of local government.

(2) "Revenue bond" means a bond issued by a municipality pursuant to this Article.

(3) "Revenue bond project" means any undertaking for the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any one or combination of the following revenue-producing utility or public service enterprise facilities or systems owned or leased as lessee by the issuing unit:

a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.

b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.

c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses.

d. Systems, facilities and equipment for the treatment or disposal of solid waste.

e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots trackages, vehicles, and ferries, and mass transit systems.

f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.

g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.

h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.

i. Hospitals and other health-related facilities.

j. Public auditoriums, gymnasiums, stadiums, and convention centers.

k. Recreational facilities.

The cost of an undertaking may include all property, both real and personal and improved and unimproved, plants, works, appurtenances, machinery, equipment, easements, water rights, air rights, franchises, and licenses used or useful in connection with any of the foregoing utilities and enterprises; the cost of demolishing or moving structures from land acquired and the cost of acquiring any lands to which such structures are to be moved; financing charges; the cost of plans, specifications, surveys, and estimates of cost and revenues; administrative and legal expenses; and any other expense necessary or incident to the project.

(4) "Revenues" include all moneys received by a municipality from, in connection with, or as a result of its ownership or operation of a revenue bond project or a utility or public service enterprise facility or system of which a revenue bond project is a part, including (to the extent deemed advisable by the municipality) moneys received from the United States of America, the State of North Carolina, or any agency of either, pursuant to an agreement with the municipality pertaining to the proj-

ect. (Ex. Sess. 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2; 1951, c. 703, s. 1; 1953, c. 901, ss. 4, 5; c. 922, s. 1; 1965, c. 997; 1969, c. 1118, s. 1; 1971, c. 780, s. 1.)

§ **159-82. Purpose.**—The purpose of this Article is to establish a standard, uniform procedure for the financing by a municipality of revenue bond projects through the issuance of revenue bonds. Its provisions are intended to vest authority in and enable municipalities to secure and pay revenue bonds and the interest thereon solely out of revenues without creating a debt or pledging the faith and credit of the municipality. (1971, c. 780, s. 1.)

§ **159-83. Powers.**—(a) In addition to the powers it may now or hereafter have, each municipality shall have the following powers, subject to the provisions of this Article and of any revenue bond order or trust agreement securing revenue bonds:

(1) To acquire by gift, purchase, or exercise of the power of eminent domain, or to acquire, construct, reconstruct, extend, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest.

(2) To sell, exchange, transfer, assign, or otherwise dispose of any revenue bond project or portion thereof or interest therein determined by resolution of the governing board not to be required for any public purpose.

(3) To sell, furnish, and distribute the services, facilities, or commodities of revenue bond projects.

(4) To enter into contracts with any person, firm, or corporation, public or private, on such terms as the governing board may determine, with respect to the acquisition, construction, reconstruction, extension, betterment, improvement, maintenance, or operation of revenue bond projects, or the sale, furnishing, or distribution of the services, facilities, or commodities thereof.

(5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, and to issue its revenue bonds or bond anticipation notes therefor in the name of the municipality, but no encumbrance, mortgage, or other pledge of real property of the municipality may be created in any manner.

(6) To establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, or other charges, free of any control or regulation by the North Carolina Utilities Commission or any other regulatory body except as provided in G.S. 159-95 for the use, services, facilities, and commodities of or furnished by any revenue bond project, and to provide methods of collection of and penalties for nonpayment of such rates, fees, rentals, tolls, or other charges. The rates, fees, rentals, tolls, and charges so fixed and charged shall be such as will produce revenues at least sufficient with any other available funds to meet the expense of maintenance and operation of and renewals and replacements to the revenue bond project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) on all revenue bonds secured thereby, and to fulfill the terms of any agreements made by the issuing unit with the holders of revenue bonds issued to finance all or any portion of the cost of the project.

(7) To pledge all or part of any proceeds derived from the use of on-street

parking meters to the payment of the cost of operating, maintaining, and improving parking facilities whether on-street or off-street, and the principal of and the interest on revenue bonds issued for on-street or off-street parking facilities.

(8) To pledge to the payment of its revenue bonds and interest thereon revenues from one or more revenue bond projects and any leases or agreements to secure such payment, including revenues from improvements, betterments, or extensions to such projects thereafter constructed or acquired as well as the revenues from existing systems, plants, works, instrumentalities, and properties of the projects to be improved, bettered, or extended.

(9) To appropriate, apply, or expend for the following purposes the proceeds of its revenue bonds, notes issued in anticipation thereof, and revenues pledged under any resolution or order authorizing or securing the bonds: (i) To pay interest on the bonds or notes and the principal or redemption price thereof when due; (ii) to meet reserves and other requirements set forth in the bond order or trust agreement; (iii) to pay the cost of acquisition, construction, reconstruction, extension, or improvement of the revenue bond projects authorized in the bond order and to provide working capital for initial maintenance and operation until funds are available from revenues; (iv) to pay and discharge revenue bonds and notes issued in anticipation thereof; (v) to pay and discharge general obligation bonds issued under Article 4 of this Chapter, when the revenues of the project financed in whole or in part by the general obligation bonds will be pledged to the payment of the revenue bonds or notes.

(10) To make and enforce rules and regulations governing the use, maintenance, and operation of revenue bond projects.

(11) To accept gifts or grants of real or personal property, money, material, labor, or supplies for the acquisition, construction, reconstruction, extension, improvement, betterment, maintenance, or operation of any revenue bond project and to make and perform such agreements or contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants.

(12) To accept loans, grants, or contributions from, and to enter into contracts and cooperate with the United States of America, the State of North Carolina, or any agency thereof, with respect to any revenue bond project.

(13) To enter on any lands, waters, and premises for the purpose of making surveys, borings, soundings, examinations, and other preliminary studies for constructing and operating any revenue bond project.

(14) To retain and employ consultants and other persons on a contract basis for rendering professional, financial, or technical assistance and advice.

(15) Subject to any provisions of law requiring voter approval for the sale or lease of utility or enterprise systems, to lease to or from any person, firm, or corporation, public or private, all or part of any revenue bond project, upon such terms and conditions and for such term of years, not in excess of 40 years, as the governing board may deem advisable to carry out the provisions of this Article, and to provide in such lease for the extension or renewal thereof and, if deemed advisable, for an option to purchase or otherwise lawfully acquire the project upon terms and conditions therein specified.

(16) To execute such instruments and agreements and to do all things necessary or convenient in the exercise of the powers herein granted, or

in the performance of the covenants or duties of the municipality, or to secure the payment of its revenue bonds.

(b) Any contract, agreement, lease, deed, covenant, or other instrument or document evidencing an agreement or covenant between bondholders or any public agency and a municipality issuing revenue bonds with respect to any of the powers conferred in this section shall be approved by the Commission. (Ex. Sess. 1938, c. 2, s. 3; 1951, c. 703, ss. 2, 3; 1953, c. 922, s. 2; 1969, c. 1118, s. 2; 1971, c. 780, s. 1.)

§ 159-84. Authorization of revenue bonds.—Each municipality is hereby authorized to issue its revenue bonds in such principal amount as may be necessary to provide sufficient moneys for the acquisition, construction, reconstruction, extension, betterment, improvement, or payment of the cost of one or more revenue bond projects, including engineering, inspection, legal, and financial fees and costs, working capital, interest on the bonds or notes issued in anticipation thereof during construction and, if deemed advisable by the municipality, for a period not exceeding two years after the estimated date of completion of construction, establishment of debt service reserves, and all other expenditures of the municipality incidental and necessary or convenient thereto.

Subject to agreements with the holders of its revenue bonds, each municipality may issue further revenue bonds and refund outstanding revenue bonds whether or not they have matured. Revenue bonds may be issued partly for the purpose of refunding outstanding revenue bonds and partly for any other purpose under this Article. Revenue bonds issued to refund outstanding revenue bonds shall be issued under this Article and not Article 4 of this Chapter. (1953, c. 692; 1969, c. 1118, s. 4; 1971, c. 780, s. 1.)

§ 159-85. Application to Commission for approval of revenue bond issue; preliminary conference; acceptance of application.—A municipality may not issue revenue bonds under this Article unless the issue is approved by the Local Government Commission. The governing board of the issuing unit, or its duly authorized agent, shall file an application for Commission approval of the issue with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed revenue bonds and the financial condition of the issuing unit and its utilities and enterprises as the Secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the proposed issue and the timing of the steps to be taken in issuing the bonds.

After an application in proper form and order has been filed, and after a preliminary conference if one is required, the secretary shall notify the unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the unit has complied with this section. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081; 1967, c. 555; 1969, c. 688, s. 2; 1971, c. 780, s. 1.)

§ 159-86. Approval of application by Commission.—(a) In determining whether a proposed revenue bond issue shall be approved, the Commission may consider:

(1) Whether the project to be financed from the proceeds of the revenue bond issue is necessary or expedient.
(2) Whether the proposed project is feasible.
(3) The unit's debt management procedures and policies.
(4) Whether the unit is in default in any of its debt service obligations.

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(5) Whether the probable net revenues of the project to be financed will be sufficient to service the proposed revenue bonds.
(6) The ability of the Commission to market the proposed revenue bonds at reasonable rates of interest.

The Commission may inquire into and give consideration to any other matters that it may believe to have a bearing on whether the issue should be approved.

(b) The Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

(1) That the proposed revenue bond issue is necessary or expedient.
(2) That the amount proposed is adequate and not excessive for the proposed purpose of the issue.
(3) That the proposed project is feasible.
(4) That the unit's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
(5) That the proposed revenue bonds can be marketed at reasonable interest cost to the issuing unit. (1971, c. 780, s. 1.)

§ **159-87. Order approving or denying the application.**—(a) After considering an application the Commission shall enter its order either approving or denying the application. An order approving an issue shall not be regarded as an approval of the legality of the bonds in any respect.

(b) If the Commission enters an order denying the application, the proceedings under this Article shall be at an end. (1971, c. 780, s. 1.)

§ **159-88. Adoption of revenue bond order.**—At any time after the Commission approves an application for the issuance of revenue bonds, the governing board of the issuing unit may adopt a revenue bond order pursuant to this Article. (1971, c. 780, s. 1.)

§ **159-89. Special covenants.**—A revenue bond order or a trust agreement securing revenue bonds may contain covenants as to

(1) The pledge of all or any part of revenues received or to be received from the undertaking to be financed by the bonds, or the utility or enterprise of which the undertaking is to become a part.
(2) Rates, fees, rentals, tolls or other charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants, and funds received or to be received.
(3) The setting aside of debt service reserves and the regulation and disposition thereof.
(4) The custody, collection, securing, investment, and payment of any moneys held for the payment of revenue bonds.
(5) Limitations or restrictions on the purposes to which the proceeds of sale of revenue bonds then or thereafter to be issued may be applied.
(6) Limitations or restrictions on the issuance of additional revenue bonds or notes; the terms upon which additional revenue bonds or notes may be issued and secured; or the refunding of outstanding or other revenue bonds.
(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the percentage of revenue bonds the bondholders of which must consent thereto, and the manner in which such consent may be given.
(8) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which revenue bonds issued under this Article shall become or may be declared due before maturity, and the

terms and conditions upon which such declaration and its consequences may be waived.

(9) The preparation and maintenance of a budget with respect to the expenses of the municipality for the operation and maintenance of revenue bond projects.

(10) The retention or employment of consulting engineers, independent auditors, and other technical consultants in connection with revenue bond projects.

(11) Limitations on or the prohibition of free service by revenue bond projects to any person, firm, or corporation, public or private.

(12) The acquisition and disposal of property for revenue bond projects.

(13) Provisions for insurance and for accounting reports and the inspection and audit thereof.

(14) The continuing operation and maintenance of the revenue bond project or the utility or enterprise of which it is to become a part. (Ex. Sess. 1938, c. 2, s. 6; 1971, c. 780, s. 1.)

§ **159-90. Limitations on details of bonds.**—In fixing the details of revenue bonds, the issuing municipality shall be subject to the following restrictions and directions:

(1) The maturity dates may not exceed the maximum maturity periods prescribed by the Commission for general obligation bonds pursuant to G.S. 159-122.

(2) No bonds may be made payable on demand, but any bond may be made subject to redemption prior to maturity, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated. When any such bond shall have been validly called for redemption and provision shall have been made for the payment of the principal thereof, any redemption premium, and the interest thereon accrued to the date of redemption, interest thereon shall cease.

(3) The bonds may bear interest at such rate or rates, payable semiannually or otherwise, may be in such denominations, and may be payable in such kind of money and in such place or places within or without the State of North Carolina, as the issuing municipality may determine. (Ex. Sess. 1938, c. 2, s. 5; 1949, c. 1081; 1967, c. 100, s. 1; c. 711, s. 2; 1969, c. 688, s. 1; 1971, c. 780, s. 1.)

§ **159-91. Lien of revenue bonds.**—All revenue bonds issued under this Article shall be equally and ratably secured by a pledge, charge, and lien upon revenues provided for in the bond order, without priority by reason of number, or of dates of bonds, execution, or delivery, in accordance with the provisions of this Article and of the bond order; except that a municipality may provide in a revenue bond order that revenue bonds issued pursuant thereto shall to the extent and in the manner prescribed in the order or agreement be subordinated and junior in standing, with respect to the payment of principal and interest and the security thereof, to any other revenue bonds.

Any pledge made by a municipality pursuant to this Article shall be valid and binding from the date of final passage of the bond order upon the issuance of any bonds or bond anticipation notes thereunder. The revenues, securities, and other moneys so pledged and then held or thereafter received by the municipality or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the municipality without regard to whether such parties have notice thereof. The bond order by which a pledge is created need not be filed or recorded in any manner other than as provided in this Subchapter. (1971, c. 780, s. 1.)

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§ 159-92. Status of revenue bonds under Uniform Commercial Code.—Whether or not the revenue bonds and interest coupons appertaining thereto are of such form and character as to be investment securities under Article 8 of the Uniform Commercial Code as enacted in this State, all revenue bonds and interest coupons appertaining thereto issued under this Article are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, subject only to the provisions of the bonds pertaining to registration. (1971, c. 780, s. 1.)

§ 159-93. Agreement of the State.—The State of North Carolina does pledge to and agree with the holders of any revenue bonds heretofore or hereafter issued by any municipality in this State that so long as any of such bonds are outstanding and unpaid the State will not limit or alter the rights vested in the municipality at the time of issuance of the bonds to establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, and other charges for the use, services, facilities, and commodities of or furnished by the revenue bond project in connection with which the bonds, or bonds refunded by the bonds, were issued as shall produce revenues at least sufficient with other available funds to meet the expense of maintenance and operation of and renewals and replacements to such project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) of the bonds, and to fulfill the terms of any agreements made with the bondholders, nor will the State in any way impair the rights and remedies of the bondholders, until the bonds and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully paid, met, and discharged. (1971, c. 780, s. 1.)

§ 159-94. Limited liability of municipality.—Revenue bonds shall be special obligations of the municipality issuing them. The principal of and interest on revenue bonds shall not be payable from the general funds of the municipality, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the funds which are pledged under the bond order authorizing the bonds. Neither the credit nor the taxing power of the municipality are pledged for the payment of the principal or interest of revenue bonds, and no holder of revenue bonds has the right to compel the exercise of the taxing power by the municipality or the forfeiture of any of its property in connection with any default thereon. Every revenue bond shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the municipality is not obligated to pay the principal or interest except from such revenues. (Ex. Sess. 1938, c. 2, s. 7; 1953, c. 922, s. 3; 1971, c. 780, s. 1.)

§ 159-95. Approval of State agencies required in certain instances.—The general design and plan of any revenue bond project undertaken for water systems or facilities or sewage disposal systems or facilities shall be subject to the approval of the State Board of Health or the State Board of Water and Air Resources to the same extent that such projects would be if they were not financed by revenue bonds, and the provisions of the revenue bond order shall be consistent with any requirements imposed on the project by the State Board of Health, or the State Board of Water and Air Resources. No revenue bond project for the acquisition or construction of systems or facilities for the generation, production, or transmission of gas or electric power may be undertaken by a municipality unless the municipality shall first obtain a certificate of convenience and necessity from the North Carolina Utilities Commission. shall be owned or operated by the municipality for its own use and for the use of public and private consumers residing within its corporate limits. A utility or public service enterprise financed wholly or partially by revenue bonds, when operated primarily for the municipality's own

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use and for users within its corporate limits, may be operated incidentally for users outside its corporate limits. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081; 1967, c. 555; 1969, c. 688, s. 2; 1971, c. 780, s. 1.)

§ 159-96. Limitation on extraterritorial operation of enterprises financed by revenue bonds.—Each utility or public service enterprise listed in G.S. 159-81(3), if financed wholly or partially by revenue bonds issued under this Article, shall be owned or operated by the municipality for its own use and for the use of public and private consumers residing within its corporate limits. A utility or public service enterprise financed wholly or partially by revenue bonds, when operated primarily for the municipality's own use and for users within its corporate limits, may be operated incidentally for users outside its corporate limits. (1971, c. 780, s. 1.)

ARTICLE 6.

§§ 159-97 to 159-120: Reserved for future codification purposes.

ARTICLE 7.

Issuance and Sale of Bonds.

§ 159-121. Coupon or registered bonds to be issued.—Bonds may be issued as (i) coupon bonds payable to bearer, (ii) coupon bonds registered as to principal only, or (iii) bonds registered as to both principal and interest, in the discretion of the issuing unit. Registered bonds may be transferred by the registered owner in person or by attorney, upon presentation to the bond registrar of the bond to be transferred together with a written instrument of transfer in a form approved by the bond registrar. Registered bonds may be discharged from registry by a registered transfer to bearer. The bond registrar shall note each transfer on the back of the bond and in the bond register. Each issuing unit is authorized to appoint or designate a bond registrar who shall be charged with the duty of attending to the registration and transfer of bonds. (1917, c. 138, s. 29; 1919, c. 178, s. 3 (29); C. S., s. 2955; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 36; 1971, c. 780, s. 1.)

§ 159-122. Maturities of bonds.—(a) Except for funding and refunding bonds, the last installment of each bond issue shall mature not later than the date of expiration of the period of usefulness of the capital project to be financed by the bond issue, computed from the date of the bonds. The last installment of a funding or refunding bond issue shall mature not later than either (i) the shortest period, but not more than 40 years, in which the debt to be funded or refunded can be finally paid without making it unduly burdensome on the taxpayers of the issuing unit, as determined by the Commission, or (ii) the end of the unexpired period of usefulness of the capital project financed by the debt to be funded or refunded.

(b) The Commission shall by regulation establish the maximum period of usefulness of the capital projects for which units of local government may issue bonds, but no capital project may be assigned a period of usefulness in excess of 40 years.

(c) The determination of the Commission as to the classification of the capital projects for which a particular bond issue is authorized, and the Commission's determination of the maximum period of usefulness of the project, as evidenced by the secretary's certificate, shall be conclusive in any action or proceeding involving the validity of the bonds. (1917, c. 138, s. 18; 1919, c. 178, s. 3 (18); C. S., s. 2942; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 11; 1929, c. 170; c. 171, s. 2; 1931, c. 60, ss. 50, 56; cc. 188, 301; 1933, c. 259, ss. 1, 2; 1953, c. 1065,

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s. 1; 1957, c. 266, s. 2; 1967, c. 987, s. 3; c. 1001, s. 2; c. 1086, ss. 1, 2, 4, 5; 1969, cc. 475, 834; 1971, c. 780, s. 1.)

§ 159-123. Sale of bonds by sealed bids; private sales.—(a) Bonds issued by units of local government shall be sold by the Local Government Commission after advertisement and upon sealed bids, except as otherwise authorized by subsection (b) of this section.

(b) The following classes of bonds may be sold at private sale:

(1) Bonds that a State or federal agency has previously agreed to purchase.

(2) Any bonds for which no legal bid is received within the time allowed for submission of bids.

(3) Revenue bonds.

(c) When the issuing unit wishes to have a private sale of bonds, the governing board shall adopt and file with the Commission a resolution requesting that the bonds be sold at private sale without advertisement to any purchaser or purchasers thereof, at such prices as the Commission determines to be in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit. Upon receipt of a resolution requesting private sale of bonds, the Commission may offer them to any purchaser or purchasers without advertisement, and may sell them at any price the Commission deems in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit.

(d) This section shall not apply to funding or refunding bonds when the governing board of the issuing unit and the holders of the debt to be funded or refunded have agreed to exchange the original obligations for new ones at the same or an adjusted rate of interest. (1931, c. 60, ss. 17, 19; c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943; 1971, c. 780, s. 1.)

§ 159-124. Date of sale; notice of sale and blank proposal. — The date of sale shall be fixed by the secretary in consultation with the issuing unit. Prior to the sale date, the secretary shall take such steps as are most likely, in his opinion, to give notice of the sale to all potential bidders, taking into consideration the size and nature of the issue. Notice must include at least one publication in a recognized financial journal or local newspaper not less than five days before the sale date.

The secretary shall maintain a mailing list for notices of sale and blank proposals, and shall place thereon any person, firm, or corporation so requesting. Failure to send copies of notices and blank proposals to persons, firms, or corporations on the mailing list shall in no way affect the legality of the bonds.

The secretary shall prepare a notice of sale and blank proposal for bids for each bond issue required to be sold by sealed bids. The notice and blank proposal may be combined with such fiscal information as the secretary deems appropriate, and shall contain:

(1) A statement that the bonds are to be sold upon sealed bids without auction.

(2) The aggregate principal amount of the issue.

(3) The time and place of sale, the time within which bids must be received, the place to which bids must be delivered, and the time and place at which bids will be opened.

(4) Instructions for entering bids.

(5) Instructions as to the amount of bid deposit required, the form in which it is to be made, and the effect of failure of the bidder to comply with the terms of his bid. (1931, c. 60, s. 17; c. 296, s. 1; 1933, c. 256, s. 1; 1969, c. 943; 1971, c. 780, s. 1.)

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§ **159-125. Bid instructions; bid deposit.** — (a) Except for revenue bonds, no bid for less than the face value of the bonds plus accrued interest may be entertained.

Different rates of interest may be bid for bonds maturing in different years, but different rates of interest may not be bid for bonds maturing in the same year.

(b) Each bid shall be accompanied by a bid deposit equal to two percent (2%) of the aggregate principal amount of the bond issue. The bid deposit shall be made in a form approved by the Commission, and shall secure the issuing unit against loss resulting from the bidder's failure to comply with the terms of his bid. This subsection shall not apply to bids entered by a State or federal agency.

(c) When a State or federal agency has agreed to purchase the bonds at a stated rate of interest unless more favorable bids are received, bids may be entertained from other purchasers for less than all of the bonds. (1931, c. 60, ss. 17, 19; c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943; 1971, c. 780, s. 1.)

§ **159-126. Rejection of bids.**—No legal bid may be rejected unless all bids are rejected. All bids shall be rejected upon objection to award by an authorized representative of the issuing unit. If bids have been rejected, another notice of sale shall be given and further bids invited. (1931, ch. 60, s. 18; 1935, c. 356, s. 1; 1939, c. 231, s. 3; 1971, c. 780, s. 1.)

§ **159-127. Award of bonds.**—All bids received pursuant to a public sale shall be opened in public on a date and at a time and place to be specified in the notice of sale. The bond shall be awarded to the bidder offering to purchase the bonds at the lowest interest cost to the issuing unit. In calculating such interest cost, the amount of any premium bid shall be deducted from the aggregate amount of interest on the entire issue until maturity. (1931, c. 60, s. 18; 1935, c. 356, s. 1; 1939, c. 231, s. 3; 1971, c. 780, s. 1.)

§ **159-128. Makeup and formal execution of bonds; temporary bonds.**—The governing board of the issuing unit shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto. The board may also provide for the authentication of the bonds by a trustee or fiscal agent. The board may authorize the use of facsimile signatures and seals on the bonds and coupons, if any, but at least one manual signature must appear on each bond (which may be the signature of the representative of the Commission to the Commission's certificate). Delivery of bonds executed in accordance with the board's determination shall be valid notwithstanding any change in officers or in the seal of the issuing unit occurring after the original execution of the bonds.

Before definitive bonds are prepared, the unit may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when they have been executed and are available for delivery. (1917, c. 138, s. 28; 1919, c. 178, s. 3 (28); C. S., s. 2954; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 35; 1969, c. 29; 1971, c. 780, s. 1.)

§ **159-129. Obligations of units certified by Commission.**—Each bond shall bear on its face or reverse a certificate signed by the secretary of the Commission or an assistant designated by him that the issuance of the bond has been approved under the provisions of the Local Government Bond Act, or the Local Government Revenue Bond Act. The certificate shall be conclusive evidence that the requirements of this Subchapter have been observed, and no bond without the Commission's certificate shall be valid. (1931, c. 60, s. 22; c. 296, s. 2; 1971, c. 780, s. 1.)

§ **159-130. Record of issues kept.**—The secretary shall make a record of all bonds issued under this Subchapter, showing the name of the issuing unit, the

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amount, date, the time fixed for payment of principal and interest, the rate of interest, the place at which the principal and interest will be payable, the denominations, the purpose of issuance, the name of the board in which is vested the authority and power to levy taxes or raise other revenues for the payment of the principal and interest thereof, and a reference to the law under which the bonds were issued. The clerk of the issuing unit shall file with the secretary copies of all proceedings of the board in authorizing the bonds, his certificate that they are correctly recorded in a bound book of the minutes and proceedings of the board, and a notation of the pages or other identification of the exact portion of the book in which the records appear. (1931, c. 60, s. 23; 1971, c. 780, s. 1.)

§ **159-131. Contract for services to be approved by Commission.**—Any contract or agreement made by any unit with any person, firm, or corporation for services to be rendered in drafting forms of proceedings for a proposed bond issue shall be void unless approved by the Commission. Before giving its certificate to bonds, the Commission shall satisfy itself, by such evidence as it may deem sufficient, that no unapproved contract is in effect. This section shall not apply to contracts and agreements with attorneys at law licensed to practice before the courts of the State within which they have their residence or regular place of business so long as the contracts or agreements involve only legal services. (1931, c. 60, s. 24; 1971, c. 780, s. 1.)

§ **159-132. State Treasurer to deliver bonds and remit proceeds.**—When the bonds are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall then pay from the proceeds any notes issued in anticipation of the sale of the bonds, deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. The proceeds of funding or refunding bonds may be deposited at the place of payment of the indebtedness to be refunded or funded for use solely in the payment of such indebtedness. The proceeds of revenue bonds shall be remitted to the trustee or other depository specified in the trust agreement or resolution securing them. (1931, c. 60, s. 25; 1935, c. 356, s. 2; 1971, c. 780, s. 1.)

§ **159-133. Suit to enforce contract of sale.**—The Commission may enforce in any court of competent jurisdiction any contract or agreement made by the Commission for the sale of any bonds of a unit. (1931, c. 60, s. 26; 1971, c. 780, s. 1.)

§ **159-134. Fiscal agents.**—An issuing unit may employ a bank or trust company either within or without this State as fiscal agent for the payment of installments of principal and interest on the bonds, and for the destruction of paid or cancelled bonds and coupons, and may pay reasonable fees for this service not in excess of maximum rates to be fixed by regulation of the Commission. (1971, c. 780, s. 1.)

§ **159-135. Application of proceeds.**—After payment of the cost of preparing, marketing, and issuing the bonds, the proceeds of the sale of a bond issue shall be applied only to the purposes for which the issue was authorized and to pay any notes issued in anticipation of the sale of the bonds. Any excess amount which for any reason is not needed for any such purpose shall be applied either (i) toward the purchase and retirement of bonds of that issue at not more than their face value and accrued interest, or (ii) toward payment of the earliest maturing installments of that issue, or (iii) in accordance with any trust agreement or resolution securing the bonds. (1917, c. 138, s. 31; 1919, c. 178, s. 3 (31); C. S., s. 2957; 1921, s. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 38; 1971, c. 780, s. 1.)

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§ **159-136. Issuing unit to make and report debt service payments.**—The finance officer of each unit having outstanding bonds or notes shall remit the funds necessary for the payment of maturing installments of principal and interest on the bonds or notes to the fiscal agent or agreed upon place of payment in sufficient time for the payment thereof, together with the agreed upon fiscal agency fees, and shall at the same time report the payment to the secretary on forms to be provided by the Commission. (1931, c. 60, s. 27; 1971, c. 780, s. 1.)

§ **159-137. Lost, stolen, defaced, or destroyed bonds or notes.** — (a) If lost, stolen, or completely destroyed, any bond, note, or coupon may be reissued in the same form and tenor upon the owner's furnishing to the satisfaction of the secretary and the issuing unit: (i) proof of ownership, (ii) proof of loss or destruction, (iii) a surety bond in twice the face amount of the bond or note and coupons, and (iv) payment of the cost of preparing and issuing the new bond, note, or coupons.

(b) If defaced or partially destroyed, any bond, note, or coupon may be reissued in the same form and tenor to the bearer or registered holder, at his expense, upon surrender of the defaced or partially destroyed bond, note, or coupon and on such other conditions as the Commission may prescribe. The Commission may also provide for authentication of defaced or partially destroyed bonds, notes, or coupons instead of reissuing them.

(c) Each new bond, note, or coupon issued under this section shall be signed by the officers of the issuing unit who are in office at the time, or by the State Treasurer if the unit no longer exists, and shall contain a recital to the effect that it is issued in exchange for or replacement of a certain bond, note, or coupon (describing it sufficiently to identify it) and is to be deemed a part of the same issue as the original bond, note, or coupon. (1935, c. 292, ss. 1, 2; 1939, c. 259; 1971, c. 780, s. 1.)

§ **159-138. Cancellation of bonds and notes.**—Each bond or note and coupon shall be cancelled when (i) it is paid, or (ii) it is acquired by the issuing unit in any manner other than purchase for investment. A full report of the cancellation of all bonds, notes, and coupons shall be made to the secretary on forms provided by the Commission. (1931, c. 60, s. 27; 1939, c. 356; 1971, c. 780, s. 1.)

§ **159-139. Destruction of cancelled bonds, notes, and coupons.**—All cancelled bonds, notes, and interest coupons of a unit may be destroyed in one of the following ways, in the discretion of the governing board:

(1) Method 1.—The finance officer shall make an entry in a substantially bound book kept by him for the purpose of recording the destruction of bonds, notes, and coupons, showing
   a. With respect to bonds and notes, the purpose of issuance, the date of issue, serial numbers (if any), denomination, maturity date, and total principal amount.
   b. With respect to coupons, the purpose of issue and date of the bonds to which the coupons appertain, the maturity date of the coupons and, as to each maturity date, the denomination, quantity, and total amount of coupons.

   After this entry has been made, the paid bonds, notes, and coupons shall be destroyed by either burning or shredding, in the presence of the mayor or chairman of the governing board, the finance officer, the unit's attorney, and the clerk to the governing board, or any three of them, each of whom shall certify under his hand in the book kept by the finance officer that he saw the bonds and coupons destroyed. Cancelled bonds, notes, or coupons shall not be destroyed until after one year from date of maturity.

(2) Method 2.—The governing board may contract with the bank or trust

company acting as fiscal agent for a bond issue for the destruction of bonds and interest coupons which have been cancelled by the fiscal agent. The contract shall require that the fiscal agent give the unit a written certificate of each destruction containing the same information required by Method 1 to be entered in the record of destroyed bonds and coupons. The certificates shall be filed among the permanent records of the finance officer's office. Bonds or coupons shall not be destroyed until one year after date of maturity.

The provisions of G.S. 121-5 and 132-3 shall not apply to paid bonds, notes, and coupons. (1941, cc. 203, 293; 1961, c. 663, ss. 1, 2; 1963, c. 1172, ss. 1, 2; 1971, c. 780, s. 1.)

§§ **159-140 to 159-147:** Reserved for future codification purposes.

ARTICLE 8.

Financing Agreements.

§ **159-148. Contracts subject to Article; exceptions.**—(a) Except as provided in subsection (b) of this section, this Article applies to any contract, agreement, memorandum of understanding, and any other transactions having the force and effect of a contract (other than agreements made in connection with the issuance of revenue bonds), made or entered into by a unit of local government in this State, relating to the lease, acquisition, or construction of capital assets, which contract

(1) Extends for five or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, and

(2) Obligates the unit to pay sums of money to another, without regard to whether the payee is a party to the contract, and

(3) Obligates the unit over the full term of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, to the extent of five hundred thousand dollars ($500,000) or a sum equal to one tenth of one per cent (1/10 of 1%) of the appraised value of property subject to taxation by the contracting unit (before the application of any assessment ratio), whichever is less, and

(4) Obligates the unit, expressly or by implication, to exercise its power to levy taxes either to make payments falling due under the contract, or to pay any judgment entered against the unit as a result of the unit's breach of the contract.

Contingent obligations shall be included in calculating the value of the contract. Several contracts that are all related to the same undertaking shall be deemed a single contract for the purposes of this Article. When several contracts are considered as a single contract, the term shall be that of the contract having the longest term, and the sums to fall due shall be the total of all sums to fall due under all single contracts in the group.

(b) This Article shall not apply to:

(1) Contracts between a unit of local government and the State of North Carolina or the United States of America (or any agency of either) entered into as a condition to the making of grants or loans to the unit of local government.

(2) Contracts for the purchase, lease, or lease with option to purchase of motor vehicles or voting machines. (1971, c. 780, s. 1.)

§ **159-149. Application to Local Government Commission for approval of contract.**—A unit of local government may not enter into any contract

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subject to this Article unless it is approved by the Local Government Commission as evidenced by the secretary's certificate thereon. Any contract subject to this Article that does not bear the secretary's certificate thereon shall be void, and it shall be unlawful for any officer, employee, or agent of a unit of local government to make any payments of money thereunder. Before executing a contract subject to this Article, the governing board of the contracting unit shall file an application for Commission approval of the contract with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed contract and the financial condition of the contracting unit as the secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the proposed contract.

After an application in proper form and order has been filed, and after a preliminary conference if one is required, the secretary shall notify the unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the unit has complied with this section. (1971, c. 780, s. 1.)

§ 159-150. Sworn statement of debt; debt limitation.—After or at the time an application is filed under G.S. 159-149, the finance officer, or some other officer designated by the board, shall prepare, swear to, and file with the secretary and for public inspection in the office of the clerk to the board a statement of debt in the same form prescribed in G.S. 159-55 for statements of debt filed in connection with general obligation bond issues. The sums to be included in gross debt and the deductions therefrom to arrive at net debt shall be the same as prescribed in G.S. 159-55, except that sums to fall due under contracts subject to this Article shall be treated as if they were evidenced by general obligation bonds of the unit.

No contract subject to this Article may be executed if the net debt of the contracting unit, after execution of the contract, would exceed eight percent (8%) of the appraised value of property subject to taxation by the contracting unit before the application of any assessment ratio. (1971, c. 780, s. 1.)

§ 159-151. Approval of application by Commission.—(a) In determining whether a proposed contract shall be approved, the Commission may consider:

(1) Whether the undertaking is necessary or expedient.
(2) The nature and amount of the outstanding debt of the contracting unit.
(3) The unit's debt management procedures and policies.
(4) The unit's tax and special assessments collection record.
(5) The unit's compliance with the Local Government Budget and Fiscal Control Act.
(6) Whether the unit is in default in any of its debt service obligations.
(7) The unit's present tax rates, and the increase in tax rate, if any, necessary to raise the sums to fall due under the proposed contract.
(8) The unit's appraised and assessed value of property subject [to] taxation.
(9) The ability of the unit to sustain the additional taxes necessary to perform the contract.
(10) If the proposed contract is for a utility or public service enterprise, the probable net revenues of the undertaking to be financed and the extent to which the revenues of the utility or enterprise, after addition of the revenues of the undertaking to be financed, will be sufficient to meet the sums to fall due under the proposed contract.
(11) Whether the undertaking could be financed by a bond issue, and the

reasons and justifications offered by the contracting unit for choosing this method of financing rather than a bond issue.

The Commission shall have authority to inquire into and to give consideration to any other matters that it may believe to have bearing on whether the contract should be approved.

(b) The Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

(1) That the proposed contract is necessary or expedient.
(2) That the contract, under the circumstances, is preferable to a bond issue for the same purpose.
(3) That the sums to fall due under the contract are adequate and not excessive for its proposed purpose.
(4) That the unit's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
(5) That the increase in taxes, if any, necessary to meet the sums to fall due under the contract will not be excessive.
(6) That the unit is not in default in any of its debt service obligations.

The Commission need not find all of these facts and conclusions if it concludes that (i) the proposed project is necessary and expedient, (ii) the proposed undertaking cannot be economically financed by a bond issue and (iii) the contract will not require an excessive increase in taxes.

If the Commission tentatively decides to deny the application because it cannot be supported from the information presented to it, it shall so notify the unit filing the information. If the unit so requests, the Commission shall hold a public hearing on the application at which time any interested persons shall be heard. The Commission may appoint a hearing officer to conduct the hearing and to present a summary of the testimony and his recommendation for the Commission's consideration. (1971, c. 780, s. 1.)

§ **159-152. Order approving or denying the application.**—(a) After considering an application, and conducting a public hearing thereon if one is requested under G.S. 159-151, the Commission shall enter its order either approving or denying the application. An order approving an application shall not be regarded as an approval of the legality of the contract in any respect.

(b) If the Commission enters an order denying an application, the proceedings under this Article shall be at an end. (1971, c. 780, s. 1.)

§§ **159-153 to 159-160:** Reserved for future codification purposes.

Article 9.

Bond Anticipation and Tax and Revenue Anticipation Notes.

Part 1. Bond Anticipation Notes.

§ **159-161. Bond anticipation notes.**—At any time after a bond order has taken effect, the issuing unit may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue. Bond anticipation notes shall be payable not later than five years after the time the bond order takes effect and shall not be renewed or extended beyond such time, except that if the issuance of bonds under the bond order is prevented or prohibited by any order of any court, the bond anticipation notes may be renewed or extended by the length of time elapsing between the date of institution of the action or proceeding and the date of its final disposition. Any extension of the time for issuing bonds under a bond order granted by act of the General Assembly pursuant to G.S. 159-64 shall also extend the time for issuing notes under this section for the same period of time. (1917, c. 138, ss. 13, 14; 1919, c. 178, s. 3 (13), (14); C. S., ss. 2934, 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693 ss. 2, 4; 1969, c. 687, s. 3; 1971, c. 780, s. 1.)

§ **159-162. Security of general obligation bond anticipation notes.**—The faith and credit of the issuing unit are hereby pledged for the payment of each note issued in anticipation of the sale of general obligation bonds according to its terms, and the power and obligation of the issuing unit to levy taxes and raise other revenues for the prompt payment of such notes shall be unrestricted as to rate or amount, notwithstanding any other provisions of law. The proceeds of each general obligation bond issue are also hereby pledged for the payment of any notes issued in anticipation of the sale thereof, and any such notes shall be retired from the proceeds of the bonds as the first priority. In the discretion of the governing board, notes issued in anticipation of the sale of general obligation bonds may be paid from current revenues or other funds instead of from the bond proceeds, but if this is done, the bond order shall be amended to reduce the aggregate authorized principal amount by the amount of the bond anticipation notes and accrued interest thereon. Such an amendment need not be published and shall take effect upon its passage. (1971, c. 780, s. 1.)

§ **159-163. Security of revenue bond anticipation notes.**—Notes issued in anticipation of the sale of revenue bonds are hereby declared special obligations of the issuing unit. Neither the credit nor the taxing power of the issuing unit may be pledged for the payment of notes issued in anticipation of the sale of revenue bonds, and no holder of a revenue bond anticipation note shall have the right to compel the exercise of the taxing power by the issuing unit or the forfeiture of any of its property in connection with any default thereon. Notes issued in anticipation of the sale of revenue bonds shall be secured by the same pledges, charges, liens, covenants, and agreements made to secure the revenue bonds. In addition, the proceeds of each revenue bond issue are hereby pledged for the payment of any notes issued in anticipation of the sale thereof, and any such notes shall be retired from the proceeds of the sale as the first priority. (1971, c. 780, s. 1.)

§ **159-164. Negotiable notes to be issued.**—Bond anticipation loans shall be evidenced by negotiable notes which are hereby declared to be investment securities within the meaning of Article 8 of the Uniform Commercial Code as enacted in this State. Bond anticipation notes may be renewed or extended from time to time, but not beyond the time period allowed in G.S. 159-161. The governing board may authorize the issuance of bond anticipation notes by resolution which shall fix the actual or maximum face amount of the notes and may authorize any officer to fix the face amount and rate of interest within the limitations prescribed by the resolution. The resolution shall specify the form and manner of execution of the notes. (1917, c. 138, ss. 13, 14; 1919, c. 178, s. 3 (13), (14); C. S., ss. 2934, 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, ss. 2, 4; 1969, c. 687, s. 3; 1971, c. 780, s. 1.)

§ **159-165. Sale of bond anticipation notes.**—Bond anticipation notes shall be sold by the Commission by public or private negotiations according to such procedures as the Commission may by regulation prescribe. (1917, c. 138, s. 14; 1919, c. 178, s. 3 (14); C. S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, s. 2; 1969, c. 687, s. 3; 1971, c. 780, s. 1.)

(This Chapter is not effective until July 1, 1973.)

§§ **159-166 to 159-168:** Reserved for future codification purposes.

Part 2. Tax and Revenue Anticipation Notes.

§ **159-169. Tax anticipation notes.**—(a) A unit of local government having the power to levy taxes is authorized to borrow money for the purpose of paying appropriations made for the current fiscal year in anticipation of the collection of taxes due and payable within the fiscal year, and to issue its negotiable notes in evidence thereof. A tax anticipation note shall mature not later than 30 days after the close of the fiscal year in which it is issued, and may not be renewed beyond that time.

(b) No tax anticipation loan shall be made if the amount thereof, together with the amount of tax anticipation notes authorized or outstanding on the date the loan is authorized, would exceed fifty percent (50%) of the amount of taxes uncollected as of the date of the proposed loan authorization, as certified in writing to the governing board by the chief financial officer of the issuing unit. Each tax anticipation note shall bear on its face or reverse the following certificate signed by the finance officer: "This note and all other tax anticipation notes of [issuing unit] authorized or outstanding as of [date] amount to less than fifty percent (50%) of the amount of taxes for the current fiscal year uncollected as of the above date." No tax anticipation note shall be valid without this certificate.

(c) The faith and credit of the issuing unit are hereby pledged for the payment of each tax anticipation note issued under this section according to its terms, and the power and obligation of the issuing unit to levy taxes and raise other revenues for the prompt payment of such notes shall be unrestricted as to rate or amount, notwithstanding any other provisions of law. (1917, c. 138, s. 12; 1919, c. 178, s. 3 (12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1971, c. 780, s. 1.)

§ **159-170. Revenue anticipation notes.**—(a) A unit of local government is authorized to borrow money for the purpose of paying appropriations made for the current fiscal year in anticipation of the receipt of revenues, other than taxes, estimated in its budget to be realized in cash during the fiscal year, and to issue its negotiable notes in evidence thereof. A revenue anticipation note shall mature not later than 30 days after the close of the fiscal year in which it is issued, and may not be renewed beyond that time.

(b) No revenue anticipation loan shall be made if the amount thereof, together with the amount of all revenue anticipation notes authorized or outstanding on the date the loan is authorized, would exceed eighty percent (80%) of the revenues of the issuing unit, other than taxes, estimated in its budget to be realized in cash during the fiscal year. Each revenue anticipation note shall bear on its face a statement to the effect that it is payable solely from budgeted nontax revenues of the issuing unit and that the faith and credit of the issuing unit are not pledged for the payment of the note, and on its face or reverse the following certificate signed by the finance officer: "This note and all other revenue anticipation notes of [issuing unit] authorized or outstanding as of [date] amount to less than eighty percent (80%) of the budgeted nontax revenues for the current fiscal year as of the above date." No revenue anticipation note shall be valid without this certificate.

(c) Revenue anticipation notes issued under this section shall be special obligations of the issuing unit. Neither the credit nor the taxing power of the issuing unit may be pledged for the payment of revenue anticipation notes, and no holder of a revenue anticipation note shall have the right to compel the exercise of the taxing power by the issuing unit or the forfeiture of any of its property in connection with any default thereon. (1917, c. 138, s. 12; 1919, c. 178, s. 3 (12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1971, c. 780, s. 1.)

§ **159-171:** Reserved for future codification purposes.

§ **159-172. Authorization and issuance of notes.**—(a) Notes issued under G.S. 159-169 and 159-170 shall be authorized by resolution of the governing board of the issuing unit. The resolution shall fix the maximum aggregate principal amount of notes to be issued thereunder, and authorize the chief financial officer of the issuing unit authority to determine the face amount of individual notes and their rate of interest within limitations prescribed in the resolution. The notes shall be signed with the manual or facsimile signature of officers designated by the governing board for that purpose. Several notes may be issued under one authorization so long as the aggregate principal amount of notes outstanding at any one time does not exceed the limits of the authorization.

(b) Notes issued under G.S. 159-169, 159-170, and 159-171 shall be sold by the Commission by public or private sale according to such procedures as the Commission may prescribe. (1917, c. 138, s. 14; 1919, c. 178, s. 3 (14); C. S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1931, c. 293; 1939, c. 231, s. 1; 1971, c. 780, s. 1.)

§§ **159-173 to 159-175:** Reserved for future codification purposes.

ARTICLE 10.

Assistance for Defaulting Units in Refinancing Debt.

§ **159-176. Commission to aid defaulting units in developing refinancing plans.**—If a unit of local government or municipality (as defined in G.S. 159-44 or G.S. 159-81) fails to pay any installment of principal or interest on its outstanding debt on or before the due date (whether the debt is evidenced by general obligation bonds, revenue bonds, bond anticipation notes, tax anticipation notes, or revenue anticipation notes) and remains in default for 90 days, the Commission may take such action as it deems advisable to investigate the unit's fiscal affairs, consult with its governing board, and negotiate with its creditors in order to assist the unit in working out a plan for refinancing, adjusting, or compromising the debt. When a plan is developed that the Commission finds to be fair and equitable and reasonably within the ability of the unit to meet, the Commission shall enter an order finding that it is fair, equitable, and within the ability of the unit to meet. The Commission shall then advise the governing board to take the necessary steps to implement it. If the governing board declines or refuses to do so within 90 days after receiving the Commission's advice, the Commission may enter an order directing the governing board to implement the plan. When this order is entered, the members of the governing board and all officers and employees of the unit shall be under an affirmative duty to do all things necessary to implement the plan. The Commission may apply to the appropriate division of the General Court of Justice for a court order to the governing board and other officers and employees of the unit to enforce the Commission's order. (1935, c. 124, ss. 1, 2; 1971, c. 780, s. 1.)

§ **159-177. Power to require reports and approve budgets.**—When a refinancing plan has been put into effect pursuant to G.S. 159-176, the Commission shall have authority to require any periodic reports on the unit's financial affairs (in addition to those otherwise required by law) that the secretary deems necessary, and to approve or reject the unit's annual budget. The governing board of the unit shall obtain the approval of the secretary before adopting the annual

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budget. If the Commission recommends modifications in the budget, the governing board shall be under an affirmative duty to make the modifications before adopting the budget. (1935, c. 124, ss. 3, 4; 1971, c. 780, s. 1.)

§ **159-178. Duration of Commission's powers.**—The power and authority granted to the Commission in this Article shall continue with respect to a defaulting unit of local government until the Commission is satisfied that the unit has performed or will perform the duties required of it in the refinancing plan, and until agreements made with the unit's creditors have been performed in accordance with the plan. (1935, c. 124, s. 5; 1971, c. 780, s. 1.)

§§ **159-179, 159-180:** Reserved for future codification purposes.

ARTICLE 11.

Enforcement of Chapter.

§ **159-181. Enforcement of Chapter.**—(a) If any finance officer, governing board member, or other officer or employee of any local government or public authority shall approve any claim or bill knowing it to be fraudulent, erroneous, or otherwise invalid, or make any written statement, give any certificate, issue any report, or utter any other document required by this Chapter, knowing that any portion of it is false, or shall willfully fail or refuse to perform any duty imposed upon him by this Chapter, he is guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars ($1,000), forfeits his office, and shall also be personally liable in a civil action for all damages suffered thereby by the unit or authority or the holders of any of its obligations.

(b) If any person embezzles any funds belonging to any unit of local government or local public authority, or appropriates to his own use any personal property having a value of more than fifty dollars ($50.00) belonging to any unit of local government or local public authority, in addition to the crimes and punishment otherwise provided by law, upon conviction he forfeits his office or position and is forever thereafter barred from holding any office or place of trust or profit under the State of North Carolina or any political subdivisions thereof until the disability is removed in the manner provided for restoration to citizenship in Chapter 13 of the General Statutes.

(c) The Local Government Commission shall have authority to impound the books and records of any unit of local government or public authority and assume full control of all its financial affairs (i) when the unit or authority defaults on any debt service payment or, in the opinion of the Commission, will default on a future debt service payment if the financial policies and practices of the unit or authority are not improved, or (ii) when the unit or authority persists, after notice and warning from the Commission, in willfully or negligently failing or refusing to comply with the provisions of this Chapter. When the Commission takes action under this section, the Commission is vested with all of the powers of the governing board as to the levy of taxes, expenditure of money, adoption of budgets, and all other financial powers conferred upon the governing board by law. (1971, c. 780, s. 1.)

§ **159-182. Offending officers and employees removed from office.**—Without abating any provisions of law for criminal and civil actions, when the Commission has probable cause to believe that any officer or employee of a unit of local government or public authority has committed any act or made any omission that results in a forfeiture of office or position, the Commission may enter an order suspending the offender from further performance of his office or employ-

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ment, after first giving him notice and an opportunity to be heard in his own defense, pending the outcome of quo warranto proceedings. Upon suspending a local officer or employee under this section, the Commission shall report the circumstances to the Attorney General who shall initiate quo warranto proceedings against the officer or employee in the General Court of Justice. If an officer or employee persists in performing any official act in violation of an order of the Commission suspending him from performance of his duties, the Commission may apply to the General Court of Justice for a restraining order and injunction. (1931, c. 60, s. 45; 1971, c. 780, s. 1.)

Chapter 159A.

Pollution Abatement and Industrial Facilities Financing Act.

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Editor's Note.—Session Laws 1971, c. 633, ss. 2 and 3 provide:

"Sec. 2. Liberal construction. This act, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect the purposes hereof.

"Sec. 3. Inconsistent laws inapplicable. Insofar as the provisions of this Chapter are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling."

Session Laws 1971, c. 633, s. 4, contains a severability clause.

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§ **159A-1. Short title.**—This Chapter may be referred to as the "North Carolina Pollution Abatement and Industrial Facilities Financing Act." (1971, c. 633, s. 1.)

§ **159A-2. Legislative findings and purposes.**—(a) The General Assembly finds and determines that the development and expansion of commerce and industry within the State, which are essential to the economic growth of the State and to the full employment and prosperity of its citizens are accompanied by the increased use of processes and facilities and the increased production and discharge of noise, and gaseous, liquid, and solid wastes which threaten and endanger the health, welfare and safety of the citizens of the State by polluting the air, land and waters of the State; that in order to reduce, control and prevent such environmental pollution, it is imperative that action be taken at various levels of government to require acquisition and installation of devices, equipment and facilities for the collection, reduction, treatment, and disposal of such wastes and pollutants and that such actions heretofore or hereafter taken be effectively coordinated; that the assistance provided in this Chapter, especially with respect to financing, is therefore in the public interest and serves a public purpose of the State in promoting the health, welfare and safety of the citizens of the State that not only physically by reducing, controlling and preventing environmental pollution but also economically by the securing and retaining of private enterprises and the resulting maintenance of higher level of employment and economic activity and stability.

(b) The General Assembly further finds and determines that certain areas of the State have not shared in the general economic prosperity and development which is being experienced by the State; that the significant gap which exists between those areas and the other areas of the State will become wider as employment opportunities in agriculture decline with the introduction of mechanized farming methods; that there exists in those areas a critical condition of unemployment and absence of employment opportunities which may well exist from time to time in other areas of the State; that the economic insecurity which results from such unemployment and absence of employment opportunities constitutes a serious menace to the safety, morals and general welfare of the people of not only the directly affected areas but also of the people of the entire State; that such unemployment and absence of employment opportunities have caused many workers and their families, including the youth upon which any future economic prosperity is dependent, to migrate elsewhere to find employment and establish homes; that such migration has resulted in a reduction in the tax base of the counties and other local governmental units in such areas which impairs the financial ability of such counties and other local governmental units to support education and other local governmental services; that such unemployment results in obligations to grant public assistance and in the payment of unemployment compensation; that the aforesaid conditions can best be remedied by the promotion, attraction, stimulation, rehabilitation and revitalization of commerce, industry and manufacturing in such areas; and that there is a need to stimulate a larger flow of private investment funds from banks, investment concerns, insurance companies and other financial institutions into industrial building programs in such areas. It is therefore declared to be the policy of the State to promote the safety, morals, right to gainful employment, business opportunities, the conservation of the air and waters of the State, the achievement and maintenance of a total environment of superior quality, and general welfare of the inhabitants thereof by providing for the creation of county authorities which shall exist and operate as political subdivisions and bodies corporate and politic of the State for the purposes of

(1) Pollution control financing in the counties in all areas of the State for the public purpose of preventing, controlling and eliminating all types of pollution and/or,

(2) Industrial facilities financing in the counties for the public purpose of alleviating unemployment, below average manufacturing wages, and below average per capita income by maintaining employment at a high level and by creating, attracting and developing industrial facilities which provide job opportunities, higher skills and better wages than those prevalent in the area. (1971, c. 633, s. 1.)

§ **159A-3. Definitions.**—The following terms, whenever used or referred to in this Chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Agency" shall include any agency, bureau, commission, department or instrumentality.

(2) "Air pollution control facility" shall mean any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing gaseous industrial waste and other air pollutants, including recovery, treatment, neutralizing or stabilizing plants and equipment and their appurtenances.

(3) "Authority" shall mean a political subdivision and body corporate and politic organized in accordance with the provisions of this Chapter.

(4) "Bonds" shall mean revenue bonds of an authority issued under the provisions of this Chapter and shall include refunding bonds.

(5) "Cost" as applied to any project shall embrace the cost of construction, the cost of acquisition of all property, including rights in land and other property, both real and personal and improved and unimproved, the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all machinery and equipment, start-up expenses, financing charges, interest prior to and during construction and for a period not exceeding

one year after completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consultants' and legal services, other expenses necessary or incident to determining the feasibility or practicability of constructing such project, administrative and other expenses necessary or incident to the acquisition or construction of such project and the financing of the acquisition and construction thereof, including reimbursement to any lessee of such project for such expenditures, made with the prior approval of the authority, as would be costs of the project hereunder had they been made directly by the authority.

(6) "County" shall mean any county of this State now or hereafter existing.

(6a) "Distressed areas" shall mean any county meeting at least one of the following tests:

a. During the immediately preceding calendar year with respect to which published reports are available, the estimated rate of unemployment among the labor force of the county was at least six percent (6%); or

b. During the immediately preceding calendar year with respect to which published reports are available, the estimated average manufacturing wage of factory production workers in the county was at least ten percent (10%) less than the State average for the same period; or

c. During the immediately preceding calendar year with respect to which published reports are available, the estimated average per capita personal income in the county was ten percent (10%) less than the State average for the same period; or

d. The county is one which has suffered a substantial loss of population due to lack of employment opportunities. Such a county shall be defined as one which suffered a one percent (1%) or more loss of population between 1960 and 1970 (or the immediately preceding 10-year period for which published reports are available); or

e. The county is one where the loss, removal, curtailment, or closing of a major source of employment has caused within three years prior to, or threatens to cause within three years after, the date of the application on unusual and abrupt rise in unemployment of such magnitude that the unemployment rate for such county at the time of the application exceeds the national average, or can reasonably be expected to exceed the national average, by fifty percent (50%) or more if no action is taken to alleviate the problem; or

f. The county becomes eligible for assistance under any of the tests and standards of section 401(a) of the Public Works and Economic Development Act of 1965 of the United States of America (Pub. L. 89-136, Title IV, 401) as amended.

For the purposes of this subdivision (6a), "published reports" shall include the reports and statistical indices published by the Department of Administration, the Department of Conservation and Development, the Department of Labor, the Department of Public Health, the Department of Tax Research and the Employment Security Commission of the State, the U.S. Department of Commerce, the U.S. Department of Labor, and such other state and federal agencies, departments, commissions and bureaus as shall publish reports necessary to establish the existence of the aforementioned conditions.

(7) "Governing body" shall mean the board, commission, council or other

body in which the general legislative powers of any county or other political subdivision are vested.

(8) "Industrial waste" shall mean any liquid, gaseous or solid waste substance resulting from any process of industry, manufacture, trade or business, or from the development, processing or recovery of any natural resource which pollutes the water or air of or adjacent to the State of North Carolina.

(9) "Noise abatement facility" shall mean any facility or equipment for the purpose of reducing, preventing or eliminating noise pollution.

(10) "Political subdivision" shall mean any county, city, town, incorporated village, school district, sanitary district or other public corporation or political subdivision of the State now or hereafter existing.

(11) "Pollution" shall mean the placing of any noxious or deleterious substances (including noise) in any air or water of or adjacent to the State of North Carolina or affecting the physical, chemical or biological properties of any air or waters of or adjacent to the State of North Carolina in a manner and to an extent which renders or is likely to render such air or waters harmful or inimical to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial or agricultural purposes or recreation.

(12) "Project" shall mean any equipment or any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with a factory, mill, processing plant, assembly plant, fabricating plant, industrial distribution center or research and development facility, any air pollution control facility, noise abatement facility, water management facility, waste water collecting system, waste water treatment works, or solid waste disposal facility, including facilities for industrial, medical, electronic and other types of research and development and facilities for manufacturing, processing, assembling, or handling of any manufactured, agricultural or animal products or products of mining and other natural resources, or any combination of the foregoing, and including also the sites thereof and all other rights in land, whether improved or unimproved, furnishings, machinery, equipment, landscaping and site preparation, and all appurtenances and incidental facilities such as headquarters or office facilities whether or not at the location of the remainder of the project, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, dockage, wharfage and other improvements necessary or convenient for the construction, maintenance and operation of any such building or structure, or addition thereto; provided that no retail or wholesale store and no office, storage or other commercial facility not incidental to said use of any such building or structure shall be included in any project.

(13) "Revenues" shall mean, with respect to any project, the rents, fees, charges, and other income or profit derived therefrom.

(14) "Sewage" shall mean any substance that contains any of the waste products or excrement or other discharge from the bodies of human beings or animals, together with such ground water infiltration and surface water as may be present. The admixture with sewage of industrial waste or other waste shall also be considered to be sewage.

(15) "Solid waste" shall mean garbage, refuse and other discarded materials, including, but not limited to, solid waste materials resulting from industrial, commercial, agricultural and residential activities.

(16) "Solid waste disposal facility" shall mean a facility for the purpose of treating, compacting, composting or disposing of solid waste materials, including treatment, compacting, composting or disposal plants, site and equipment furnishings thereof, and their appurtenances, but not including services or equipment necessary for the collection of solid wastes.

(17) "State" shall mean the State of North Carolina.

(18) "Waste water" shall mean any water containing sewage or industrial waste or otherwise subjected to pollution.

(19) "Waste water collecting system" shall mean a surface or underground system designed to convey waste water from commercial, residential, industrial or other properties to a waste water treatment works.

(20) "Waste water treatment works" shall mean a facility for the purpose of treating, neutralizing, stabilizing, cooling, segregating or holding waste water, including, without limiting the generality of the foregoing, facilities for the treatment and disposal of sewage or industrial waste and the residue thereof, necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, site equipment and furnishings thereof and the appurtenances.

(21) "Water management facilities" shall mean facilities for the purpose of the development, use and protection of water resources, including, without limiting the generality of the foregoing, facilities for water supply, facilities for stream flow improvement, dams, reservoirs, and other impoundments, water transmission lines, water wells and well fields, pumping stations and works for underground water recharge, stream monitoring systems, facilities for the stabilization of stream and river banks, and facilities for the treatment of streams and rivers, including, without limiting the generality of the foregoing, facilities for the removal of pollutants, oil, debris and other solid waste from the waters of and adjacent to the State of North Carolina. (1971, c. 633, s. 1.)

§ 159A-4. Creation of authorities. — (a) The governing body of any county is hereby authorized to create by resolution or ordinance a political subdivision and body corporate and politic of the State known as "The .... (the blank space to be filled in with the name of the county) County Pollution Abatement and Industrial Facilities Financing Authority," which shall consist of a board of seven commissioners, to be appointed by the governing body of such county in the resolution or ordinance creating such authority, or by subsequent resolution or ordinance. Such resolution or ordinance shall state whether the authority may issue its bonds for pollution control purposes or industrial facility financing purposes or both and a certified copy of such resolution shall be filed in the records of the authority. At least 30 days prior to the adoption of such resolution or ordinance, the governing body of such county shall file with the Department of Conservation and Development of the State of North Carolina and the Local Government Commission of North Carolina, on forms to be furnished by said Department and Commission, notice of its intention to adopt a resolution or ordinance creating an authority. At the time of the appointment of the first board of commissioners the governing body of the county shall appoint two commissioners for initial terms of two years each, two commissioners for initial terms of four years each and three commissioners for initial terms of six years each and thereafter the terms of all commissioners shall be six years, except appointments to fill vacancies which shall be for the unexpired terms. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing body of the county and entered in its minutes.

If at the end of any term of office of any commissioner a successor thereto shall not have been appointed, then the commissioner whose term of office shall have expired shall continue to hold office until his successor shall be so appointed.

(b) Each commissioner of an authority shall be a qualified elector and resident of the county for which the authority is created, and no commissioner shall be an officer or employee of the State or any political subdivision or any agency of either thereof. Each commissioner of an authority may be removed, with or without cause, by the governing body of the county which appointed him.

(c) The board of commissioners of the authority shall annually elect one of the commissioners as chairman, another as vice chairman, and another person or persons, who may but need not be commissioners, as treasurer, secretary and, if desired, assistant secretary, any two of which three last named offices may be held by the same person. The secretary or assistant secretary of the authority shall keep a record of the proceedings of the authority, and the secretary shall be the custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. Either the secretary or the assistant secretary of the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

(d) A majority of the commissioners of an authority then in office shall constitute a quorum. The affirmative vote of a majority of the commissioners of an authority then in office shall be necessary for any action taken by the authority. A vacancy in the board of commissioners of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted.

(e) No commissioner of an authority shall receive any compensation for the performance of his duties hereunder; however, subject to the provisions of G.S. 159A-11, each commissioner shall be paid his necessary expenses incurred while engaged in the performance of such duties.

(f) Within 120 days of the date of creation of the authority, the commissioners shall file a written application on behalf of the authority to the Department of Conservation and Development of the State of North Carolina requesting that the Board of Conservation and Development make a determination that the proposed operation of the authority is for a public purpose and stating the basis of such request. The Department of Conservation and Development shall then make such independent investigations as it deems advisable in order to make its determination. The formal determination shall be made by the full Board of Conservation and Development at its quarterly meeting, which meeting shall be public. At least one week prior to the date set for such meeting, the Board of Conservation and Development shall cause to be published, for three consecutive days, in a newspaper of general circulation within the county for which the authority was created, notice that the application of the authority is to be considered at such meeting. The final action and findings of fact by the Board of Conservation and Development shall be contained in a resolution containing the following:

(1) A statement that the proposed operation of the authority is or is not for a public purpose, and, if it finds that the proposed authority is for a public purpose,

(2) That the finding of a public purpose was based upon the determination that

  a. The county for which the authority was created is a distressed area (and further stating which test or tests for designation as a distressed area were met), and/or

  b. That substantial air, water or noise pollution now exists within

said county or may be expected to exist within five years of the application if no effective preventive measures are taken and
c. The facts upon which the Board's findings are based.

At any time subsequent to the initial proceeding under G.S. 159A-4(f) in respect to a particular authority, the Board of Conservation and Development may, only upon application of the authority, revise its original findings due to a change in circumstances. The additional findings shall be set forth in a resolution in form similar to the resolution adopted at the original proceeding.

Any such findings shall be reviewable as provided in the General Statutes of North Carolina, Chapter 143, Article 33, only by action filed, by the authority or by any person, firm or corporation who objected at the hearing held pursuant to this section, within 30 days of the date of the resolution of the Board of Conservation and Development, in the Superior Court of Wake County challenging such findings. Such Superior Court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, such findings shall become final and the basis therefor conclusively presumed, and no court shall have authority to inquire into such matters. The petition filed in such action shall name as defendants the Board of Conservation and Development and the authority and such defendants and the Attorney General of the State of North Carolina shall each be served with a copy of the petition. (1971, c. 633, s. 1.)

§ **159A-5. General powers.**—After a finding that such authority is for a public purpose under G.S. 159A-4(f) becomes final, each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;
(2) To adopt an official seal and alter the same at pleasure;
(3) To maintain an office at such place or places within the boundaries of the county for which it was created as it may determine;
(4) To sue and be sued in its own name, plead and be impleaded;
(5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;
(6) To make and execute agreements of lease, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this Chapter, including contracts with persons, firms, corporations and others;
(7) To acquire by purchase, lease, gift or otherwise, but not by eminent domain, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, and interests in land less than the fee thereof, for the construction, operation or maintenance of any project; provided that no project shall be financed hereunder unless the authority shall, in acquiring the site thereof, obtain thereby at least a leasehold interest, sufficient for the purpose, terminating not earlier than 25 years from the final maturity date of the bonds that shall be initially issued to pay any part of the cost of such project;
(8) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
(9) To pledge or assign any money, rents, charges, fees or other revenues and any proceeds derived by the authority from the sales of property and insurance or condemnation awards;
(10) To issue bonds of the authority for the purpose of providing funds to pay all or any part of the cost of any project or for the purpose of refunding any bonds theretofore issued;

(11) To construct, acquire, own, repair, maintain, extend, improve, rehabilitate, renovate, furnish and equip one or more projects and to pay all or any part of the costs thereof from the proceeds of bonds of the authority or from any contribution, gift or donation or other funds made available to the authority for such purpose;

(12) To fix, charge and collect rents, fees and charges for the use of any project;

(13) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor; and

(14) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the authority herein. (1971, c. 633, s. 1.)

§ **159A-6. Location of projects.**—Any project or projects of an authority shall be located within the boundaries of the county for which the authority was created. (1971, c. 633, s. 1.)

§ **159A-7. Agreements of lease.**—No project financed under the provisions of this Chapter shall be operated by an authority or the State or any political subdivision or any agency thereof. The authority shall lease a project or projects to one or more persons, firms or private corporations for operation and maintenance in such manner as shall effectuate the purposes of this Chapter, under an agreement of lease in form and substance not inconsistent herewith. Any such agreement of lease may provide, among other provisions, that:

(1) The lessee shall, at its own expense, operate, repair and maintain the project or projects leased thereunder;

(2) The rent payable under the lease shall in the aggregate be not less than an amount sufficient to pay all of the principal of and interest and redemption premiums, if any, on the bonds that shall be issued by the authority to pay the cost of the project or projects leased thereunder;

(3) The lessee shall pay all other costs incurred by the authority in connection with the financing, construction and administration of the project or projects leased, except as may be paid out of the proceeds of bonds or otherwise, including, but without limitation, insurance costs, the cost of administering the bond resolution authorizing the bonds and any trust agreement securing the bonds and the fees and expenses of trustees, paying agents, attorneys, consultants and others;

(4) The term of the lease shall terminate not earlier than the date on which all such bonds and all other obligations incurred by the authority in connection with the project or projects leased thereunder shall be paid in full, including interest, principal and redemption premiums, if any, or adequate provision for such payment shall be made; and

(5) The lessee's obligation to pay rent shall not be subject to cancellation, termination or abatement by the lessee until such payment of the bonds or provision for such payment shall be made. Any such agreement of lease may contain such additional provisions as in the determination of the authority are necessary or convenient to effectuate the purposes of this Chapter, including options for extensions of the term and renewals of the lease and options, to be exercised at such time or times not later than one year after the expiration of the term of the lease or any extension thereof, to purchase the project or projects leased thereunder pursuant to such terms and conditions consistent with this Chapter and for such consideration, if any, as shall be prescribed in the lease; provided that, except as may otherwise be expressly stated in the agreement of lease to provide for any contingencies involving

the loss of the tax-exempt status of the bonds under federal law or the destruction or condemnation of the project or projects leased, or any substantial portion thereof, such option to purchase may not be exercised until the expiration of a period of not less than 10 years from the date the final installment of the first year's rent under the lease shall be paid by the lessee and until all bonds issued for such project or projects, including all interest and redemption interest and redemption premiums, if any, and all other obligations incurred by the authority in connection with such project or projects shall have been paid in full or adequate provision therefor shall have been made. (1971, c. 633, s. 1.)

§ **159A-8. Tax exemption.**—The exercise of the powers granted by this Chapter in all respects will be for a public purpose and the benefit of the people of the State, for the maintenance and promotion of the quality of their environment, for the increase of their industry and prosperity, for the provision of gainful employment and for the improvement of their living conditions and general welfare and will constitute the performance of essential public functions, and an authority shall not be required to pay any taxes on any project or any other property owned by the authority under the provisions of this Chapter or upon the income therefrom, and the bonds issued under the provisions of this Chapter, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the State or any political subdivision or any agency of either thereof, excepting inheritance or gift taxes. Nothing in this Chapter, however, shall be construed as exempting from taxation or assessments the leasehold interest of any lessee in any project or any other property or interest owned by any lessee nor shall anything in this Chapter be construed to affect any exemption from taxation which might otherwise be available to any lessee under the laws of the State of North Carolina. Such leasehold interest is hereby classified for purposes of taxation as having the same value as the fee interest in that property. (1971, c. 633, s. 1.)

§ **159A-9. Construction contracts.**—Contracts for the construction of the project may be awarded by an authority in such manner as in its judgment will best promote free and open competition, including advertisement for competitive bids in a newspaper of general circulation in the county in which the project is to be located; provided, however, that if an authority shall determine that the purposes of the Chapter will thereby be more effectively served, the authority in its discretion may award contracts for the construction of any project, or any part thereof, upon a negotiated basis as determined by the authority. An authority shall prescribe such bid security requirements and other procedures in connection with the award of such contracts as in its judgment shall protect the public interest. An authority may by written contract engage the services of the lessee or prospective lessee of any project in the construction of such project and may provide in such contract that the lessee or prospective lessee may act as an agent of, or an independent contractor for, the authority for the performance of the functions described therein, subject to such conditions and requirements, consistent with the provisions of this Chapter, as shall be prescribed in such contract, including such functions as the acquisition of the site and other real property for such project, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of such project, or any part thereof, directly by such lessee or prospective lessee, the inspection and supervision of construction, the employment of engineers, architects, builders and other contractors and the provision of money to pay the cost thereof pending reimbursement by the authority. Any such contract may provide that the authority may, out of proceeds of bonds, make advances to or reimburse the lessee or prospective lessee for its costs incurred in the performance of such functions. (1971, c. 633, s. 1.)

§ **159A-10. Conflict of interest.**—No officer, member, agent or employee of the authority or the State or any political subdivision or any agency thereof shall be interested either directly or indirectly in any contract with an authority or in the sale of property, real or personal, to the authority for the purposes of the projects; provided, however, that this section shall not apply to the ownership of less than one per centum (1%) of the stock of any corporation. (1971, c. 633, s. 1.)

§ **159A-11. Credit of State not pledged.**—(a) Bonds issued under the provisions of this Chapter shall not be deemed to constitute a debt of the State or of any political subdivision or of any agency thereof or a pledge of the faith and credit of the State or of any political subdivision or of any such agency, but shall be payable solely from the revenues and other funds provided therefor. Each bond issued under this Chapter shall contain on the face thereof a statement to the effect that the authority shall not be obligated to pay the same nor the interest thereon except from the revenues, proceeds and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision or of any agency thereof is pledged to the payment of the principal of or the interest on such bonds.

(b) Expenses incurred by an authority in carrying out the provisions of this Chapter shall be made payable from revenues, proceeds from the sale of bonds, and any contributions, gifts or donations made available to the authority, and no liability or obligation shall be incurred by an authority hereunder beyond the extent to which moneys shall have been so provided. (1971, c. 633, s. 1.)

§ **159A-12. Bonds.**—(a) Each authority is hereby authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project or projects. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the authority and the lessee and within the limitation of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated and shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the authority, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. No bonds may be issued by an authority unless the issuance thereof is approved by the Local Government Commission of North Carolina. The authority shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of bonds which shall include such information concerning the proposed financing and the prospective lessee as the Secretary may require.

In determining whether a proposed bond issue should be approved, the Local Government Commission shall consider, without limitation, the following:

(1) The financial responsibility and the capability of the prospective lessee to fulfill its obligations under the agreement of lease. In determining such financial responsibility, consideration shall be given to the lessee's ratio of current assets to current liabilities, net worth, earnings trends, coverage of all fixed charges, the nature of the industry or business involved and its stability, any guarantee of the obligations by some other financially responsible corporation, firm or person, and other factors determinative of the capability of the lessee, financially and otherwise, to fulfill its obligations consistently with the purpose of this Chapter.

(2) The ability of the political subdivision in or near which the proposed project is to be located to cope satisfactorily with the impact of the project and to provide, or cause to be provided, the public facilities, including utilities, and public services that will be necessary for the construction, operation, repair and maintenance of the project and on account of any increases in population which are expected to result therefrom.

(3) The making of adequate provision for the operation, repair and maintenance of the proposed project at the expense of the lessee and for the payment of the principal of and the interest on the bonds.

(4) The effect of the proposed financing upon any scheduled or proposed sale of tax-exempt obligations by the State or any of its agencies or departments or by any unit of local government in the State.

The Local Government Commission shall approve the issuance of the bonds if, upon the information and evidence it receives, it finds and determines that the criteria set forth in the preceding paragraph of this section are satisfied and that the proposed financing will effectuate the purposes of this Chapter. Upon the filing with the Local Government Commission of a resolution of the authority requesting that its bonds be sold and the issuance of a formal certificate of approval by the Director of Conservation and Development as provided for in G.S. 159A-21, such bonds may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission shall determine to be for the best interests of the authority and effectuate best the purposes of this Chapter, provided that such sale shall be approved by the authority and the lessee, but no such sale shall be made at a price so low as to cause the net effective interest rate of an issue of bonds to exceed the interest limits set forth in G.S. 24-1.1, as amended, and successor provisions. For the purposes of this section, "net effective interest rate" shall be computed, without regard to (i) any optional or mandatory redemption prior to the designated maturity dates of the bonds, or (ii) any costs incident to the issuance and sale of the bonds including any reasonable legal fees, underwriter's or fiscal agent's fees, recording and issuance cost, by dividing the total amount of interest to accrue on the bonds from their date to their respective maturities, less the amount of any premium above par or plus the amount of any discount at which the bonds are being or have been sold, by the sum of the products derived by multiplying the principal amounts of such bonds maturing on each maturity date by the number of years from the date of such bonds to their respective maturities.

(b) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or portion or portions thereof, for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficiency, and, unless otherwise provided in the bond resolution or in the trust agreement, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, such excess shall be deposited to the credit of the sinking fund for such bonds, or, if so provided in such resolution or trust agreement, may be applied to the payment of the cost of any additional project or projects. The authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

(c) Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of any political subdivision or of any agency of either thereof, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of such bonds or the trust agreement securing the same. (1971, c. 633, s. 1.)

§ **159A-13. Trust agreement.** — In the discretion of the authority any bonds issued under the provisions of this Chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the fees, rents, charges, proceeds from the sale of any project, or part thereof, insurance proceeds, condemnation awards and other funds and revenues to be received therefor, but shall not convey or mortgage any project or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the project or projects in connection with which such bonds shall have been authorized, the fees, rents and other charges to be fixed and collected, the sale of any project, or part thereof, or other property, the terms and conditions for the issuance of additional bonds, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. Any such trust agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the project or projects in connection with which bonds are issued or as an expense of administration of such project or projects, as the case may be. (1971, c. 633, s. 1.)

§ **159A-14. Revenues.**—(a) The authority is hereby authorized to fix and to collect fees, rents and charges for the use of any project or projects, and any part or section thereof, and to contract with any person, partnership, association or corporation respecting the use thereof. The authority may require that the lessee or users of any project, or any part thereof, shall operate, repair and maintain the project and shall bear the cost thereof and other costs of the authority in connection with the project or projects leased, as may be provided in the agreement of lease or other contract with the authority, in addition to other obligations imposed under such agreement or contract.

(b) The fees, rents and charges shall be so fixed as to provide a fund sufficient, with such other funds as may be made available therefor, to pay the principal of and the interest on such bonds as the same shall become due and payable and to create any necessary or desirable reserves for such purposes. The fees, rents and charges and all other revenues and other proceeds derived from the project or projects in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to provide such reserves therefor, if any, as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The fees, rents, charges and other revenues and moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement, financing statement, continuation statement or other instrument by which a pledge is created or by which the authority's interest in any revenues is assigned need be filed or recorded in order to perfect the lien thereof as against third parties except in the records of the authority. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. (1971, c. 633, s. 1.)

§ **159A-15. Trust funds.**—Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of this Chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide that any of such moneys may be temporarily invested and reinvested pending the disbursement thereof in such securities and other investments as shall be provided in such resolution or trust agreement, and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Chapter and such resolution or trust agreement may provide. (1971, c. 633, s. 1.)

§ **159A-16. Remedies.**—Any holder of bonds issued under the provisions of this Chapter or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or, to the extent permitted by law, under such trust agreement or resolution authorizing the issuance of such bonds or under any agreement of lease or other contract executed by the authority pursuant to this Chapter, and may enforce and compel the performance of all duties required by this Chapter or by such trust agreement or resolution to be performed by any lessee or authority or by any officer thereof, including the fixing, charging and collecting of fees, rents and charges. (1971, c. 633, s. 1.)

§ **159A-17. Negotiable instruments.**—Notwithstanding any of the foregoing provisions of this Chapter or any recitals in any bonds issued under the provisions of this Chapter, all such bonds and interest coupons appertaining thereto shall be and are hereby made negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. (1971, c. 633, s. 1.)

§ **159A-18. Bonds eligible for investment.**—Bonds issued by an authority under the provisions of this Chapter are hereby made securities in which all public officers and agencies of the State and all political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or any political subdivision for any purpose for which the deposit of bonds or obligations of the State or any political subdivision is now or may hereafter be authorized by law. (1971, c. 633, s. 1.)

§ **159A-19. Revenue refunding bonds.**—(a) Each authority is hereby authorized to provide by resolution for the issuance of refunding bonds of the authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the authority, for either or both of the following additional purposes:

(1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued, and

(2) Paying all or any part of the cost of any additional project or projects.

The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect to the same shall be governed by the provisions of this Chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate therefor.

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Refunding bonds may be issued, in the determination of the authority, at any time not more than five years prior to the date of maturity or maturities or the date selected for the redemption of the bonds being refunded thereby. Pending the application of the proceeds of such refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding bonds or in the trust agreement securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1971, c. 633, s. 1.)

§ **159A-20. No power of eminent domain.**—No authority shall have any right or power to acquire any property through the exercise of eminent domain or any proceedings in the nature of eminent domain. (1971, c. 633, s. 1.)

§ 159A-21. Approval of each bond issue.—Prior to the issuance of any bonds under the provisions of this Chapter, an authority shall apply to the Department of Conservation and Development for its approval of the issuance of said bonds. The Department will first make certain pertinent findings as follows:

(1) That, insofar as the proposed project to be financed is concerned, there have been no material changes in the facts that were the basis of the determination of the Board of Conservation and Development that the county qualified as a "distressed area" as said facts were set forth in the most recent pertinent resolution of the Board of Conservation and Development pursuant to the proceedings conducted under G.S. 159A-4(f).

(2) That, insofar as the proposed project to be financed is concerned, there have been no material changes in the facts that were the basis of the determination of the Board of Conservation and Development regarding pollution as said facts were set forth in the most recent pertinent resolution of the Board of Conservation and Development pursuant to the proceedings conducted under G.S. 159A-4(f).

(3) That, insofar as can be determined from published reports and the information available, the authority has correctly determined that (i) the proposed project to be financed will alleviate those specific conditions which were the basis of the most recent pertinent finding by the Board of Conservation and Development pursuant to the proceedings under G.S. 159A-4(f), and (ii) said conditions continue to exist.

(4) The proposed project (i) will alleviate the aforementioned pollution conditions or (ii) will alleviate or tend to alleviate the conditions of below average manufacturing wages, below average per capita income or high unemployment previously stated in this Chapter, and will also make a significant contribution to the economic growth of the county in which it is to be located, will provide gainful employment to the residents of the county for which the authority was created, and will advance the economic prosperity and the public welfare of said county, the State and people thereof.

(5) The proposed project will not cause the abandonment of an industrial or research facility existing elsewhere in the State.

After the Department has made these findings, and if the project is approved, the Director shall cause said findings and notice of such approval to be published in a newspaper of general circulation within the county for which the authority was created. Any such findings and approval shall be reviewable as provided in Article 33 of Chapter 143 of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County challenging such findings and approval, or the authority to issue the bonds, the legality thereof or the source of payment thereof. Such superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the authority to issue bonds, the legality thereof shall be conclusively presumed, and no court shall have authority to inquire into such matters. The petition filed in such action shall name as defendants the Department of Conservation and Development and the authority, and such defendants and the Attorney General of the State of North Carolina shall each be served with a copy of such petition. If the Department of Conservation and Development makes the above such findings and gives such approval and no action has been filed to contest such findings and approval or the issuance of such bonds, the Director of the Department of Conservation and Development shall issue a formal certificate of approval evidencing the making of such findings and the approval of the issuance of the bonds. (1971, c. 633, s. 1.)

§ **159A-22. Dissolution of authorities.**—Whenever the board of commissioners of an authority and the governing body of the county for which such authority was created shall by joint resolution determine that the purposes for which the authority was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the authority have been fully paid or satisfied, such board of commissioners and governing body may declare the authority to be dissolved. On the effective date of such joint resolution, the title to all funds and other property owned by the authority at the time of such dissolution shall vest in the county or in such other political subdivisions as the county shall direct, and possession of such funds and other property shall forthwith be delivered to the county or to such other political subdivisions in accordance with the direction of the county. (1971, c. 633, s. 1.)

§ **159A-23. Annual reports.**—Each authority shall, promptly following the close of each calendar year, submit an annual report of its activities for the preceding year to the governing body of the county for which the authority was created. Each such report shall set forth a complete operating and financial statement covering the operations of the authority during such year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction of a project, to the extent such audit covers the construction of the project, or otherwise as part of the expense of administration of the project covered by such audit. (1971, c. 633, s. 1.)

§ **159A-24. Officers not liable.**—No commissioner of any authority shall be subject to any personal liability or accountability by reason of his execution of any bonds or the issuance thereof. (1971, c. 633, s. 1.)

§ **159A-25. Additional method.**—The foregoing sections of this Chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or refunding bonds under the provisions of this Chapter need not comply with the requirements of any other law applicable to the issuance of bonds. (1971, c. 633, s. 1.)

Chapter 160.

Municipal Corporations.

SUBCHAPTER I. REGULATIONS INDEPENDENT OF ACT OF 1917.

Article 1.

General Powers.

Sec.
160-1 to 160-4.1. [Repealed.]

Article 2.

Municipal Officers.

Part 1. Commissioners.

160-5 to 160-9.1. [Repealed.]

Part 2. Mayor.

160-10 to 160-16. [Repealed.]

Part 3. Constable and Policemen.

160-17 to 160-20.3. [Repealed.]
160-20.4. [Transferred.]
160-21. [Repealed.]

Part 4. Planning Boards.

160-22 to 160-24. [Repealed.]

Part 5. General Qualification of Officers.

160-25 to 160-27. [Repealed.]

Part 6. Reduction of Salaries.

160-28. [Repealed.]

Part 7. Defense of Employees and Officials.

160-28.1. [Repealed.]

Article 3.

Elections Regulated.

160-29 to 160-51.1. [Repealed.]

Article 4.

Ordinances and Regulations.

160-52 to 160-55. [Repealed.]

Article 5.

Municipal Taxation.

160-56 to 160-58.1. [Repealed.]

Article 6.

Sale of Municipal Property.

160-59 to 160-61.2. [Repealed.]

Article 7.

General Municipal Debts.

160-62 to 160-64. [Repealed.]

Article 8.

Public Libraries.

160-65 to 160-77. [Transferred.]

Article 8A.

Regional Councils of Local Officials.

Sec.
160-77.1 to 160-77.6. [Repealed.]

Article 9.

Local Improvements.

160-78 to 160-105. [Repealed.]

Article 10.

Inspection of Meters.

160-106 to 160-114. [Repealed.]

Article 11.

Regulation of Buildings.

160-115 to 160-154. [Repealed.]

Article 12.

Recreation Systems and Playgrounds.

160-155 to 160-164. [Repealed.]

Article 12A.

Bird Sanctuaries.

160-166.1, 160-166.2. [Repealed.]

Article 12B.

Rural Recreation Districts.

160-166.3 to 160-166.17. [Transferred.]

Article 13.

Market Houses.

160-167, 160-168. [Repealed.]
160-170, 160-171. [Repealed.]

Article 14.

Zoning Regulations.

160-172 to 160-178. [Repealed.]
160-178.1 to 160-178.5. [Transferred.]
160-179 to 160-181.2. [Repealed.]

Article 14A.

Preservation of Open Spaces and Areas.

160-181.3 to 160-181.10. [Repealed.]

Article 14B.

Community Appearance Commissions.

160-181.11 to 160-181.15. [Transferred.]

Article 15.

Repair, Closing and Demolition of Unfit Dwellings.

160-182 to 160-191. [Repealed.]

Article 15A.

Liability for Negligent Operation of Motor Vehicles.

Sec.
160-191.1 to 160-191.5. [Repealed.]

Article 15B.

Joint Water Supply Facilities.

160-191.6 to 160-191.10. [Repealed.]

Article 15C.

Rescue Squads.

160-191.11. [Repealed.]

SUBCHAPTER II. MUNICIPAL CORPORATION ACT OF 1917.

Article 16.

Operation of Subchapter.

160-192 to 160-194. [Repealed.]

Article 17.

Municipal Board of Control.

160-195 to 160-198.5. [Transferred.]

Article 18.

Powers of Municipal Corporations.

Part 1. General Powers Enumerated.

160-199 to 160-203.1. [Repealed.]

Part 2. Power to Acquire Property.

160-204 to 160-205.1. [Repealed.]
160-205.2. [Transferred.]
160-206 to 160-221. [Repealed.]

Part 3. Streets and Sidewalks.

160-222 to 160-225. [Repealed.]

Part 3A. Subdivisions.

160-226 to 160-227.1. [Repealed.]

Part 4. Markets.

160-228. [Repealed.]

Part 5. Protection of Public Health.

160-229 to 160-234. [Repealed.]

Part 6. Fire Protection.

160-235 to 160-238. [Repealed.]

Part 7. Sewerage.

160-239 to 160-254.[Repealed.]

Part 8. Light, Water, Sewer and Gas Systems.

160-255 to 160-257.1. [Repealed.]

Part 9. Care of Cemeteries.

160-258 to 160-260.2. [Repealed.]

Part 10. Municipal Taxes.

160-261 to 160-266. [Repealed.]

Article 19.

Exercise of Powers by Governing Body.

Part 1. Municipal Meetings.

Sec.
160-267 to 160-269. [Repealed.]

Part 2. Ordinances.

160-270 to 160-272. [Repealed.]

Part 3. Officers.

160-273, 160-274. [Repealed.]
160-277, 160-278. [Repealed.]

Part 4. Contracts Regulated.

160-279. [Repealed.]
160-281 to 160-281.3. [Repealed.]

Part 5. Control of Public Utilities, Institutions, and Charities.

160-282 to 160-285. [Repealed.]

Part 6. Effect upon Existing Regulations.

160-286 to 160-289. [Repealed.]

Article 20.

Accounting System.

160-290. [Repealed.]

Article 21.

Amendment of City Charters.

Part 1. Composition and Mode of Election of Governing Board.

160-291. [Repealed.]

Part 2. City Manager.

160-292 to 160-294. [Repealed.]

Part 3. How Amendment Adopted.

160-295 to 160-302. [Repealed.]

Part 4. Effect of Adoption.

160-303 to 160-307. [Repealed.]

Article 22.

Different Forms of Municipal Government.

160-308 to 160-352. [Repealed.]

Article 23.

Amendment and Repeal of Charter.

160-353 to 160-363. [Repealed.]

Article 23A.

Changing the Name of a Municipal Corporation.

160-363.1, 160-363.2. [Repealed.]

Article 24.

Elections Regulated.

160-364 to 160-366. [Repealed.]

SUBCHAPTER III. MUNICIPAL FINANCE ACT.

Article 25.

General Provisions.

Sec.
160-367 to 160-369. [Repealed.]

Article 26.

Budget and Appropriations.

160-371, 160-372. [Repealed.]

Article 27.

Temporary Loans.

160-373 to 160-376. [Repealed.]

Article 28.

Permanent Financing.

160-377 to 160-381. [Repealed.]
160-384 to 160-389. [Repealed.]
160-391 to 160-398. [Repealed.]

Article 29.

Restrictions upon the Exercise of Municipal Powers.

160-399 to 160-402. [Repealed.]

Article 30.

General Effect of Municipal Finance Act.

160-403. [Repealed.]

Article 31.

Municipal Fiscal Agency Act.

160-404, 160-405. [Repealed.]

Article 32.

Municipal Bond Registration Act.

160-406 to 160-408. [Repealed.]

SUBCHAPTER IV. FISCAL CONTROL.

Article 33.

Fiscal Control.

160-409 to 160-411.4. [Repealed.]
160-412 to 160-412.5. [Repealed.]

Article 34.

Revenue Bond Act of 1938.

160-413. [Repealed.]
160-418 to 160-420. [Repealed.]
160-422. [Repealed.]
160-424. [Repealed.]

Article 34A.

Bonds to Finance Sewage Disposal System.

160-424.1 to 160-424.8. [Repealed.]

SUBCHAPTER V. CAPITAL RESERVE FUNDS.

Article 35.

Capital Reserve Funds.

Sec.
160-425 to 160-430. [Repealed.]
160-432 to 160-434. [Repealed.]

SUBCHAPTER VI. EXTENSION OF CORPORATE LIMITS.

Article 36.

Extension of Corporate Limits.

Part 1. In General.

160-445. Procedure for adoption of ordinance extending limits; effect of adoption when no election required; public hearing and notice thereof.

Part 2. Municipalities of Less than 5,000.

160-453.11. Effect of Part on other laws.
160-453.12. Counties excepted from Part; Part 1 continued for such counties.

Part 3. Municipalities of 5,000 or More.

160-453.24. Counties excepted from Part; Part 1 continued for such counties.

SUBCHAPTER VII. URBAN REDEVELOPMENT.

Article 37.

Urban Redevelopment Law.

160-457.1. Alternative organization.
160-457.2. Creation of a county redevelopment commission.
160-457.3. Creation of a regional redevelopment commission.
160-464. Required procedures for contracts, purchases and sales; powers of commission in carrying out redevelopment project.
160-474.1. Certain actions and proceedings validated.
160-474.2. Contracts and agreements validated.

SUBCHAPTER VIII. PARKING AUTHORITIES AND FACILITIES.

Article 38.

Parking Authorities.

160-485 to 160-489. [Repealed.]
160-493. [Repealed.]

Article 39.

Financing Parking Facilities.

160-497. [Repealed.]

Sec.
160-499 to 160-504. [Repealed.]
160-504.1. Issuance of bonds under Revenue Bond Act of 1938 with additional financing by special assessments
160-505 to 160-507. [Repealed.]

SUBCHAPTER IX. PHOTOGRAPHIC REPRODUCTION OF RECORDS.

Article 40.

Photographic Reproduction of Records.

160-508, 160-509. [Repealed.]

SUBCHAPTER X. ELECTRIC SERVICE IN MUNICIPAL AREAS.

Article 41.

Electric Service in Municipal Areas.

Sec.
160-510 to 160-519. [Repealed.]

SUBCHAPTER XI. ASSESSMENTS AGAINST RAILROADS.

Article 42.

Assessments Against Railroads.

160-520, 160-521. [Repealed.]

SUBCHAPTER I. REGULATIONS INDEPENDENT OF ACT OF 1917.

ARTICLE 1.

General Powers.

§§ 160-1 to 160-4.1: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 2.

Municipal Officers.

Part 1. Commissioners.

§§ 160-5 to 160-9.1: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 2. Mayor.

§§ 160-10 to 160-12: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

§§ 160-13 to 160-16: Repealed by Session Laws 1967, c. 826, s. 1.

Effective Dates of Repeal.—Section 3, c. 826, Session Laws 1967, provides:

"This act shall become effective in accordance with the following schedule:

"(a) Upon its ratification, in those counties comprising the first, the twelfth, the fourteenth, the sixteenth, the twenty-fifth, and the thirtieth judicial districts;

"(b) On the first Monday in December, 1968, in those counties comprising the second, the third, the fourth, the fifth, the sixth, the seventh, the eighth, the ninth, the tenth, the eleventh, the thirteenth, the fifteenth, the eighteenth, the twentieth, the twenty-first, the twenty-fourth, the twenty-sixth, the twenty-seventh, and the twenty-ninth judicial districts;

"(c) On the first Monday in December, 1970, in those counties comprising the seventeenth, the nineteenth, the twenty-second, the twenty-third, and the twenty-eighth judicial districts."

The act was ratified June 20, 1967.

Part 3. Constable and Policemen.

§§ **160-17 to 160-20.3**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

§ **160-20.4**: Transferred to § 160A-283 by Session Laws 1971, c. 896, s. 4, effective January 1, 1972.

§ **160-21**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 4. Planning Boards.

§§ **160-22 to 160-24**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 5. General Qualification of Officers.

§§ **160-25 to 160-27**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 6. Reduction of Salaries.

§ **160-28**: Repealed by Session Laws 1969, c. 870.

Part 7. Defense of Employees and Officials.

§ **160-28.1**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 3.

Elections Regulated.

§§ **160-29 to 160-51.1**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 4.

Ordinances and Regulations.

§§ **160-52 to 160-55**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Article 5.

Municipal Taxation.

§§ **160-56 to 160-58.1**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Article 6.

Sale of Municipal Property.

§§ **160-59 to 160-61.2**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Article 7.

General Municipal Debts.

§§ **160-62 to 160-64**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross References. — See the Editor's note following the analysis to Chapter 160A. And see the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Editor's Note.—Sections 160-62 to 160-64 were also repealed by Session Laws 1971, c. 780, s. 10, effective July 1, 1973.

Article 8.

Public Libraries.

§§ **160-65 to 160-77**: Transferred to §§ 153-250.1 to 153-250.13 by Session Laws 1971, c. 698, s. 3, effective January 1, 1972.

Article 8A.

Regional Councils of Local Officials.

§§ **160-77.1 to 160-77.6**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Article 9.

Local Improvements.

§§ **160-78 to 160-105**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Article 10.

Inspection of Meters.

§§ **160-106 to 160-114**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 11.

Regulation of Buildings.

§§ 160-115 to 160-143: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

§§ 160-144 to 160-154: Repealed by Session Laws 1969, c. 1065, s. 1.

Editor's Note. — Former §§ 160-144 to 160-154 appeared in this Article before it was rewritten by Session Laws 1969, c. 1065, s. 1.

ARTICLE 12.

Recreation Systems and Playgrounds.

§§ 160-155 to 160-164: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 12A.

Bird Sanctuaries.

§§ 160-166.1, 160-166.2: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 12B.

Rural Recreation Districts.

§§ 160-166.3 to 160-166.17: Transferred to §§ 153-368 to 153-382 by Session Laws 1971, c. 698, s. 4, effective January 1, 1972.

Editor's Note.—Former §§ 160-166.3 to 160-166.17 were enacted by Session Laws 1969, c. 811.

ARTICLE 13.

Market Houses.

§§ 160-167, 160-168: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

§§ 160-170, 160-171: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 14.

Zoning Regulations.

§§ 160-172 to 160-178: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

§§ **160-178.1 to 160-178.5**: Transferred to §§ 160A-395 to 160A-399 by Session Laws 1971, c. 896, s. 7, effective January 1, 1972.

§§ **160-179 to 160-181.2**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 14A.

Preservation of Open Spaces and Areas.

§§ **160-181.3 to 160-181.9**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

§ **160-181.10**: Repealed by Session Laws 1969, c. 1003, s. 9, effective July 1, 1969.

Editor's Note. — The repealed section had previously been amended by Session Laws 1969, c. 35, s. 2; cc. 643, 856.

ARTICLE 14B.

Community Appearance Commissions.

§§ **160-181.11 to 160-181.15**: Transferred to §§ 160A-451 to 160A-455 by Session Laws 1971, c. 896, s. 6, effective January 1, 1972.

Editor's Note.—Former §§ 160-181.11 to 160-181.15 were enacted by Session Laws 1971, c. 1058.

ARTICLE 15.

Repair, Closing and Demolition of Unfit Dwellings.

§§ **160-182 to 160-191**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 15A.

Liability for Negligent Operation of Motor Vehicles.

§§ **160-191.1 to 160-191.5**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 15B.

Joint Water Supply Facilities.

§§ **160-191.6 to 160-191.10**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 15C.

Rescue Squads.

§ 160-191.11: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

SUBCHAPTER II. MUNICIPAL CORPORATION ACT OF 1917.

ARTICLE 16.

Operation of Subchapter.

§§ 160-192 to 160-194: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 17.

Municipal Board of Control.

§§ 160-195 to 160-198.5: Transferred to §§ 160A-6 to 160A-10 by Session Laws 1971, c. 896, s. 9, effective January 1, 1972.

Editor's Note.—Former §§ 160-195 to 160-198, relating to organization under the Municipal Corporation Act of 1917, were repealed by Session Laws 1969, c. 673, s. 1.

Session Laws 1971, c. 921, ss. 1-9, enacted new §§ 160-195 to 160-198.5, relating to the Municipal Board of Control, but these sections were transferred and renumbered by Session Laws 1971, c. 896, s. 9, effective Jan. 1, 1972.

ARTICLE 18.

Powers of Municipal Corporations.

Part 1. General Powers Enumerated.

§§ 160-199 to 160-203.1: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Editor's Note.—Former § 160-200 was amended by Session Laws 1971, c. 690, ss. 2, 3, 6; c. 937, ss. 1, 1.5; c. 1159, s. 2; c. 1207, ss. 1, 2. The first 1971 amendment added subdivision (47). The second 1971 amendment added subdivision (50). The third 1971 amendment added subdivision (48). The fourth 1971 amendment added subdivision (51). Subdivision (47) is transferred and renumbered § 160A-302.1, subdivision (48) is transferred and renumbered § 160A-491, subdivision (50) is transferred and renumbered § 160A-17.1 and subdivision (51) is transferred and renumbered § 160A-492, by Session Laws 1971, c. 896, ss. 5, 10, 11 and 15, effective Jan. 1, 1972.

Part 2. Power to Acquire Property.

§§ 160-204 to 160-205.1: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

§ 160-205.2: Transferred to § 160A-243.1 by Session Laws 1971, c. 896, s. 13, effective January 1, 1972.

§§ **160-206 to 160-221**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 3. Streets and Sidewalks.

§§ **160-222 to 160-225**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 3A. Subdivisions.

§§ **160-226 to 160-227**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

§ **160-227.1**: Repealed by Session Laws 1969, c. 1010, s. 6, effective July 1, 1969.

Editor's Note. — The repealed section had been previously amended by Session Laws 1969, cc. 272, 435.

Part 4. Markets.

§ **160-228**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 5. Protection of Public Health.

§§ **160-229 to 160-234**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 6. Fire Protection.

§§ **160-235 to 160-238**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 7. Sewerage.

§§ **160-239 to 160-254**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 8. Light, Water, Sewer and Gas Systems.

§§ **160-255 to 160-257.1**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 9. Care of Cemeteries.

§§ **160-258 to 160-260.2**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 10. Municipal Taxes.

§§ **160-261 to 160-266**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 19.

Exercise of Powers by Governing Body.

Part 1. Municipal Meetings.

§§ **160-267 to 160-269**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 2. Ordinances.

§§ **160-270 to 160-272**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 3. Officers.

§§ **160-273, 160-274**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

§§ **160-277, 160-278**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 4. Contracts Regulated.

§ **160-279**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

§§ **160-281 to 160-281.3**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 5. Control of Public Utilities, Institutions, and Charities.

§§ **160-282 to 160-285:** Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Part 6. Effect upon Existing Regulations.

§§ **160-286 to 160-289:** Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Article 20.

Accounting System.

§ **160-290:** Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross References.—See the Editor's note following the analysis to Chapter 160A. And see the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Editor's Note.—Section 160-290 was also repealed by Session Laws 1971, c. 780, s. 11, effective July 1, 1973.

Article 21.

Amendment of City Charters.

Part 1. Composition and Mode of Election of Governing Board.

§ **160-291:** Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

Editor's Note.—Session Laws 1969, c. 629, repealed Articles 21, 22 and 23 of this Chapter and enacted a new Article 21, consisting of §§ 160-291 to 160-305, in their place. Former Article 21 consisted of §§ 160-291 to 160-307 and was codified from C. S., ss. 2842 to 2858; Session Laws 1917, c. 136, subch. 16, ss. 1-18; and Session Laws 1933, c. 80, s. 5. Former Article 22 contained §§ 160-308 to 160-352, and was codified from C. S., ss. 2859 to 2899 and 2901; Session Laws 1917, c. 136, subch. 16, Parts II to VI; Session Laws 1919, c. 60, s. 1; c. 270, ss. 1, 2; Session Laws 1923, c. 203; Session Laws 1927, c. 243; Session Laws 1929, c. 32, s. 1; Session Laws 1933, c. 80, ss. 1 to 4; Session Laws 1935, c. 180; and Session Laws 1951, c. 153, ss. 1 and 2. Former Article 23 consisted of §§ 160-353 to 160-363 and was codified from C. S., ss. 2902 to 2912; Session Laws 1917, c. 136, subch. 16, Part VII; Session Laws 1919, c. 334; and Session Laws 1921, c. 56.

The new Article 21 enacted by Session Laws 1969, c. 629, was repealed by Session Laws 1971, c. 698, s. 2, effective Jan. 1, 1972.

Part 2. City Manager.

§§ **160-292 to 160-294:** Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross References. — See Editor's note following the analysis to Chapter 160A. And see Editor's note to § 160-291.

Part 3. How Amendment Adopted.

§§ **160-295 to 160-302**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross References. — See Editor's note following the analysis to Chapter 160A. And see Editor's note to § 160-291.

Part 4. Effect of Adoption.

§§ **160-303 to 160-305**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross References. — See Editor's note following the analysis to Chapter 160A. And see Editor's note to § 160-291.

§§ **160-306, 160-307**: Repealed by Session Laws 1969, c. 629, s. 1.

Cross Reference.—See Editor's note to § 160-291.

ARTICLE 22.

Different Forms of Municipal Government.

§§ **160-308 to 160-352**: Repealed by Session Laws 1969, c. 629, s. 1.

Cross Reference.—See note to § 160-291.

Editor's Note.—Session Laws 1969, c. 629, s. 3, provides: "Notwithstanding the repeal of article 22 of chapter 160 of the General Statutes of North Carolina by this act, any city or town whose charter heretofore enacted by the General Assembly incorporates by reference any of the provisions of chapter 160, article 22, shall continue to be governed by the provisions of said article as it read on January 1, 1969, until such time as the charter shall be amended, or the form of government changed as provided by this act."

ARTICLE 23.

Amendment and Repeal of Charter

§§ **160-353 to 160-363**: Repealed by Session Laws 1969, c. 629, s. 1.

Cross Reference.—See note to § 160-291.

ARTICLE 23A.

Changing the Name of a Municipal Corporation.

§§ **160-363.1, 160-363.2**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

ARTICLE 24.

Elections Regulated.

§§ **160-364 to 160-366**: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

SUBCHAPTER III. MUNICIPAL FINANCE ACT.

ARTICLE 25.

General Provisions.

§§ **160-367 to 160-369**: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 26.

Budget and Appropriations.

§§ **160-371, 160-372**: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 27.

Temporary Loans.

§§ **160-373 to 160-376**: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 28.

Permanent Financing.

§§ **160-377, 160-378**: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **160-379**: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Section 160-387 permits the use of a broad and general ballot in bond elections. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Statement of Purpose. — The ordinance authorizing a bond sale and calling a special election must state the purpose in only "brief and general terms," under this section. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Substantial Deviation from Purpose.—Where the manifest purpose for which a civic center bond issue was proposed was to revitalize the downtown area, with the civic center becoming the catalyst for other projects, and the site finally chosen by the city council remained in the downtown area, although at a distance of approximately four blocks from the site noted in speeches by public officials before the election, there was not a substantial deviation from the purpose for which the bonds were proposed. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Misrepresentations made as to the site of the civic center, for whose construction a bond issue to be paid by taxes was proposed, did not vitiate the question as submitted to the voters in the bond issue election. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

The construction, acquisition, and operation of an auditorium is not a necessary

expense, and the voters of the municipality must therefore approve a bond issue for such purpose. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Courts Favor Validity of Elections.—It is the general rule that every reasonable presumption will be indulged in favor of the validity of elections, and the courts will uphold the validity of municipal bond elections unless clear grounds are shown for invalidating them. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

§§ 160-380, 160-381: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 160-382. Determining periods for bonds to run.

(d) Periods of Usefulness.—In determining, for the purpose of this section, the probable period of the usefulness of an improvement or property, the governing body shall not deem said period to exceed the following periods for the following improvements and properties, respectively, viz.:

(1) Sewer systems (either sanitary or surface drainage), forty years.
(2) Water supply systems, or combined water and electric light systems, or combined water, electric light, and power systems, forty years.
(3) Gas systems, thirty years.
(4) Electric light and power systems, separate or combined, thirty years.
(5) Plants for the incineration or disposal of ashes, or garbage, or refuse (other than sewage), twenty years.
(6) Public parks (including or not including a playground, as a part thereof, and any buildings thereon at the time of acquisition thereof, or to be erected thereon, with the proceeds of the bonds issued for such public parks), fifty years.
(7) Playgrounds, fifty years.
(8) Buildings for purposes not stated in this section, if they are:
    a. Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, and in which there are no wood beams or lintels, and in which the floors, roofs, stair halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable materials are used in any of the partitions, floorings, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stair halls and entrance halls there is a wooden flooring on top of the fireproof floor, and that wooden sleepers are used, and that it contains wooden handrails and treads, made of hardwood, not less than two inches thick), forty years.
    b. Of nonfireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, thirty years.
    c. Of other construction, twenty years.
(9) Bridges and culverts (including retaining walls and approaches), forty years, unless constructed of wood, and in that case, ten years.
(10) Land for purposes not stated in this section, fifty years.
(11) Constructing or reconstructing the surface of roads, streets, or highways, whether including or not including contemporaneous constructing or reconstructing of sidewalks, curbs, gutters, or drains, and whether including or not including grading, if such surface:
    a. Is constructed of sand and gravel, five years;
    b. Is of waterbound macadam or penetration process, ten years;

c. Is of bricks, blocks, sheet asphalt, bitulithic, or bituminous concrete, laid on a solid foundation, or is of concrete, twenty years.

(12) Land for roads, streets, highways, or sidewalks, or grading, or constructing or reconstructing culverts, or retaining walls, or surface, or subsurface drains, fifty years.

(13) Constructing sidewalks, curbs, or gutters of brick, stone, concrete, or other material of similar lasting character, twenty years.

(14) Installing fire or police alarms, telegraph or telephone service, or other system of communication for municipal use, thirty years.

(15) Fire engines, fire trucks, hose carts, ambulances, patrol wagons, or any vehicles for use in any department of the municipality, or for the use of municipal officials, ten years.

(16) Land for cemeteries, or the improvement thereof, thirty years.

(17) Constructing sewer, water, gas, or other service connections, from the service main in the street to the curb or property line, when the work is done by the municipality in connection with any permanent improvement of or in any street, ten years.

(18) The elimination of any grade crossing or crossings and improvements incident thereto, thirty years.

(19) Equipment, apparatus, or furnishings not included in the foregoing subdivisions of this subsection, ten years.

(20) Any improvement or property not included in other subdivisions of this subsection, forty years.

(21) Land, including grading and drainage, buildings, equipment and other improvements for airports or landing fields, thirty years.

(22) Cable television systems, thirty years.

(1967, c. 1086, ss. 4, 5; 1969, c. 834.)

Editor's Note.—

The 1967 amendment rewrote subdivision (21) of subsection (d) and repealed a former subdivision (22) of that subsection. Section 6 of the amendatory act provides that the act shall also apply to bonds authorized but not issued at the effective date of the act, which became effective upon ratification, July 3, 1967.

The 1969 amendment added a new subdivision (22) to subsection (d). Former subdivision (22) was repealed by Session Laws 1967, c. 1086, s. 5.

As the rest of the section was not changed by the amendments, only subsection (d) is set out.

Repeal of Section.—Session Laws 1971, c. 780, s. 12, provides that this section shall be repealed on July 1, 1973.

§ **160-383. Sworn statement of indebtedness.**—(a) What Shall Be Shown.—After the introduction and before the final passage of a bond ordinance an officer designated by the governing body for that purpose shall file with the clerk a statement showing the following:

(1) The gross debt (which shall not include debt incurred or to be incurred in anticipation of the collection of taxes or in anticipation of the sale of bonds other than funding and refunding bonds), which gross debt shall be as follows:

a. Outstanding debt not evidenced by bonds.

b. Outstanding bonded debts.

c. Bonded debt to be incurred under ordinances passed or introduced.

(2) The deductions to be made from gross debt in computing net debt, which deductions shall be as follows:

a. Amount of unissued funding or refunding bonds included in gross debt.

b. Amount of sinking funds or other funds held for the payment of any part of the gross debt other than debt incurred for water, gas, electric light, or power purposes or two or more of said purposes.

c. The amount of uncollected special assessments theretofore levied on account of local improvements for which any part of the gross debt was or is to be incurred which will be applied when collected to the payment of any part of the gross debt.

d. The amount, as estimated by the engineer of the municipality or officer designated for that purpose by the governing body or by the governing body itself, of special assessments to be levied on account of local improvements for which any part of the gross debt was or is to be incurred, and which, when collected, will be applied to the payment of any part of the gross debt.

e. The amount of bonded debt included in the gross debt and incurred, or to be incurred, for water, gas, electric light or power purposes, or two or more of said purposes.

f. The amount of bonded debt included in the gross debt and incurred or to be incurred for sanitary sewer system purposes if the Local Government Commission determines that (i) the revenues of the sanitary sewer system and the water system or (ii), in the event the sanitary sewer system is operated with the water system as a consolidated system, the revenues of such consolidated system or (iii), in the event the sanitary sewer system and the water system are consolidated during but not for the entire five-year period hereinafter mentioned, the revenues of such sanitary sewer and water systems and such consolidated system during such period, including any surplus from prior years, were, in each of the five complete fiscal years immediately preceding the filing of this statement, sufficient to pay the operating expenses of such systems or such consolidated system or such combination thereof and the principal of and the interest on all bonds issued therefor as the same became due and payable.

g. The amount which the municipality shall be entitled to receive from any railroad or street railway company under contract theretofore made for payment by such company of all or a portion of the cost of eliminating a grade crossing or crossings within the municipality, which amount will be applied when received to the payment of any part of the gross debt.

h. Indebtedness for school purposes.

(3) The net debt, being the difference between the gross debt and the deductions.

(4) The assessed valuation of property as last fixed for municipal taxation.

(5) The percentage that the net debt bears to said assessed valuation.

(b) Limitations upon Passage of Ordinance.—The ordinance shall not be passed unless it appears from said statement that the said net debt does not exceed eight (8) percent of said assessed valuation, unless the bonds to be issued under the ordinance are to be funding or refunding bonds, or are bonds for water, gas, electric light or power purposes, or two or more of said purposes or are bonds for sanitary sewers, sewage disposal or sewage purification plants, the construction of which shall have been ordered by the Board of Water and Air Resources, which Board is hereby authorized to make such order, or by a court of competent jurisdiction or are bonds for erosion control purposes or are bonds for erecting jetties or other protective works to prevent encroachment by the ocean, sounds or other bodies of water.

(1967, c. 892, s. 4; 1969, c. 1092.)

Editor's Note.—

The 1967 amendment substituted "Board of Water and Air Resources" for "State Stream Sanitation Committee" in subsection (b).

The 1969 amendment rewrote paragraph f of subdivision (2) of subsection (a).

Session Laws 1969, c. 995, which purported to amend this section, was declared null and void and repealed by Session Laws 1969, c. 1288.

As the rest of the section was not

changed by the amendments, only subsections (a) and (b) are set out.

Repeal of Section.—Session Laws 1971, c. 780, s. 12, provides that this section shall be repealed on July 1, 1973.

§§ **160-384 to 160-386**: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **160-387**: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

This section permits the use of a broad and general ballot in bond elections. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Statement of Purpose.—The ordinance authorizing a bond sale and calling a special election must state the purpose in only "brief and general terms," under § 160-379. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Substantial Deviation from Purpose.—Where the manifest purpose for which the civic center bond issue was proposed was to revitalize the downtown area, with the civic center becoming the catalyst for other projects, and the site finally chosen by the city council remained in the downtown area, although at a distance of approximately four blocks from the site noted in speeches by public officials before the election, there was not a substantial deviation from the purpose for which the bonds were proposed. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Misrepresentations made as to the site of the civic center, for whose construction a bond issue to be paid by taxes was proposed, did not vitiate the question as submitted to the voters in the bond issue election. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

The construction, acquisition, and operation of an auditorium is not a necessary expense, and the voters of the municipality must therefore approve a bond issue for such purpose. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Courts Favor Validity of Elections.—It is the general rule that every reasonable presumption will be indulged in favor of the validity of elections, and the courts will uphold the validity of municipal bond elections unless clear grounds are shown for invalidating them. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

§§ **160-388, 160-389**: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **160-390. Amount and nature of bonds determined.**—The aggregate amount of bonds to be issued under a bond ordinance, the rate or rates of interest they shall bear, payable semiannually or otherwise, and the times and place or places of payment of the principal and interest of the bonds, shall be fixed by resolution or resolutions of the governing body. Such bonds may be made subject to redemption prior to their respective maturities with or without premium as the governing body may provide in such resolution or resolutions, with the approval of the Local Government Commission. The bonds authorized by a bond ordinance, or by two or more bond ordinances if the bonds so authorized shall be consolidated into a single issue, may be issued either all at one time as a single issue or from time to time in series, and different provisions may be made for different series. (1917, c. 138, s. 25; 1919, c. 178, s. 3 (25); C. S., s. 2951; 1921, c. 8, s. 1; Ex. Sess., 1921, c. 106, s. 1; 1933, c. 259, s. 1; 1951, c. 440, s. 1; 1953, c. 1206, s. 3: 1969, c. 686.)

Editor's Note.—

The 1969 amendment deleted "not exceeding six per centum per annum" preceding "payable semiannually" in the first sentence.

Repeal of Section.—Section Laws 1971, c. 780, s. 12, provides that this section shall be repealed on July 1, 1973.

§§ **160-391 to 160-394:** Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **160-395:** Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Law Authorizing Bond Issue Need Not Declare Proportion of Proceeds Applicable to Each Specific Purpose.—A law authorizing a bond issue for various purposes which does not declare what proportion of the proceeds of the bonds shall be applied to each specific purpose is not void. Such matter may properly rest within the sound discretion of the municipal authorities. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

Use of Bond Money. — With respect to the use of bond money, the court will not interfere with the exercise of discretionary powers of a municipal corporation unless its actions are so unreasonable and arbitrary as to amount to an abuse of discretion. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

While the law will not justify the use of the proceeds of a State or municipal bond issue for purposes other than those specified in the act authorizing the issue, it does not follow that immaterial or temporary changes consistent with the general purpose of the legislative act should be interpreted as unlawful diversions of public funds. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

It is worthy of note the cases on the use of bond money emphasize "deviation from the general purpose for which bonds are authorized" and do not outlaw such changes as are necessary under existing conditions to accomplish the general purpose. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

In construing statutory limitations upon the use of bond money for public improvements, emphasis is placed on the final result sought to be accomplished. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

Bond ordinances are passed authorizing indebtedness for certain stated purposes. When an authorizing vote is required, the bond money is earmarked for the stated purposes. However, in planning large permanent improvements the governing authorities look ahead to the future fulfillment of the construction plans. The authorities will inspect and examine the work as it progresses and minor changes from time to time are expected if conditions change and unforeseen developments occur. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

While the municipality has a limited authority, under certain conditions, to transfer or allocate funds from one project to another, included within the general purpose for which bonds are authorized, the transfer must be to a project included in the general purpose as stated in the bond resolution, and the funds may be diverted to the proposed purposes only in the event the municipality finds in good faith that conditions have so changed since the bonds were authorized that proceeds therefrom are no longer needed for the original purpose. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

"Corporate Purpose". — A definition of corporate purpose cannot be static. Changing conditions require that application of the limitations be tempered with due recognition of the existing situation so the purpose for which the public body was organized may be accomplished and enjoyment thereof by the public made possible. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

§ **160-396:** Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **160-397:** Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Editor's Note.—

Session Laws 1967, c. 799, s. 1, effective July 1, 1967, reenacted the third paragraph of this section "for the purpose of making the authority granted therein applicable to all cities and towns." Section 3 of the 1967 act repealed all laws and clauses of laws in conflict, whether general, local or special.

Session Laws 1971, c. 1216, s. 1, effective July 1, 1971, provides: "G.S. 160-397, as the same appears in Volume 3D, 1964 Replacement, of the General Statutes of North Carolina, is hereby re-enacted for the purpose of making the authority granted therein applicable to all cities and towns."

This section earmarks the income from municipally owned revenue-producing enterprises, first to the payment of all expenses of operating, managing, maintaining, repairing, enlarging, and extending such enterprises; then to the payment of interest payable in the next succeeding year on bonds issued for such enterprises; and, finally, to the payment of the amount necessary to be raised by tax in such succeeding year for the payment of the principal of said bonds. Yokley v. Clark, 262 N.C. 218, 136 S.E.2d 564 (1964).

After Paying Operation and Maintenance Expenses.—

The governing body of the city may make such use of the gross revenues of the system as they may think wise for maintaining, repairing, enlarging or extending the system, but they may not divert its revenues to other purposes so as to dissipate the net revenues which the law requires to be applied on principal and interest of waterworks bonds. Yokley v. Clark, 262 N.C. 218, 136 S.E.2d 564 (1964), citing George v City of Asheville, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935).

§ 160-398: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 160-399. In borrowing or expending moneys.

ARTICLE 29.

Restrictions upon the Exercise of Municipal Powers.

§ 160-399: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Local Modification. — Alamance, Buncombe, Cleveland, Durham, Rockingham and Wake: 1969, c. 551.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Cited in Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

§§ 160-400, 160-401: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 160-402: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Local Modification.—City of Hendersonville: 1969, c. 1078, amending 1959, c. 868; town of Elizabethtown: 1969, c. 710.

ARTICLE 30.

General Effect of Municipal Finance Act.

§ 160-403: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 31.

Municipal Fiscal Agency Act.

§§ **160-404, 160-405**: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 32.

Municipal Bond Registration Act.

§§ **160-406 to 160-408**: Repealed by Session Laws 1971, c. 780, s. 12, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

SUBCHAPTER IV. FISCAL CONTROL.

ARTICLE 33.

Fiscal Control.

§§ **160-409 to 160-410.2**: Repealed by Session Laws 1971, c. 780, s. 13, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **160-410.3**: Repealed by Session Laws 1971, c. 780, s. 13, effective July 1, 1973.

Local Modification. – Town of Whitakers: 1965, c. 996, s. 1.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§§ **160-410.4 to 160-410.9**: Repealed by Session Laws 1971, c. 780, s. 13, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§§ **160-411 to 160-411.4**: Repealed by Session Laws 1971, c. 780, s. 13, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **160-411.5. Investment of funds.**—The cash balances, or parts thereof, of municipal funds may be deposited at interest or invested as provided by G.S. 159-28.1. (1957, c. 864, s. 1; 1967, c. 798, s. 2.)

Editor's Note.—The 1967 amendment rewrote this section.

Repeal of Section.—Session Laws 1971, c. 780, s. 13, provides that this section shall be repealed on July 1, 1973.

§§ **160-412 to 160-412.4**: Repealed by Session Laws 1971, c. 780, s. 13, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 160-412.5: Repealed by Session Laws 1971, c. 780, s. 13, effective July 1, 1973.

Local Modification. — Town of Whitakers: 1965, c. 996, s. 1.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 34.

Revenue Bond Act of 1938.

§ 160-413: Repealed by Session Laws 1971, c. 780, s. 14, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Editor's Note.—

For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

The very purpose of the Revenue Bond Act, etc.—

In accord with original. See Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

Activity Must Be Adjudicated to Be for Public Purpose.—A municipality may not issue bonds to construct off-street parking lots until there has been an adjudication in a manner provided by law that the construction of such parking lots is for a public purpose in that particular municipality. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Cited in Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

§ 160-414. Definitions.

(4) The term "parking facilities" shall mean any area or place for the off-street parking or storing of motor and other vehicles, open to public use for a fee, and shall include, without limiting the foregoing, all real and personal property, driveways, roads, approaches, structures, garages, meters, mechanical equipment, and all appurtenances and facilities either on, above or under the ground which are used or usable in connection with such parking or storing of such vehicles. The term "cost" as applied to parking facilities or to extensions thereto shall include the cost of acquisition, construction, reconstruction, improvement, betterment, or extension, the cost of all labor, materials, machinery and equipment, the cost of all lands, easements, rights in lands and interests acquired by the municipality for such parking facilities or the operation thereof, the cost of demolishing or removing any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, and may include, in addition to the items of cost specified in § 160-416, financing charges, cost of plans, specifications, surveys and estimates of cost and of revenues, administrative expense, and such other expense as may be necessary or incident to such acquisition, construction or reconstruction, improvement, betterment or extension, the financing thereof and the placing of the parking facilities in operation.

(5) The word "revenue" or "revenues" shall mean all moneys received by a municipality from, in connection with or as a result of its ownership or operation of an undertaking, including, without limitation and if deemed advisable by the municipality, moneys received from the United States of America, or any agency thereof, pursuant to an agreement with the municipality pertaining to the undertaking.

(6) The term "undertaking" shall include the following revenue-producing undertakings or any combination of two or more of such undertakings, whether now existing or hereafter acquired or constructed:

a. Airports, docks, piers, wharves, terminals and other transit facilities, abattoirs, armories, auditoria, community buildings, cold-storage plants, gymnasia, markets, stadia, swimming pools, hospitals, processing plants and sea products, warehouses, highways, causeways, parkways, viaducts, bridges, and other crossings, teacherages or homes for teachers of public schools, school dormitories and teacherages, clubhouses and golf courses, and parking facilities.

b. Systems, plants, works, instrumentalities, and properties:

1. Used or useful in connection with the obtaining of a water supply and the conservation, treatment, and disposal of water for public and private uses,
2. Used or useful in connection with the collection, treatment, and disposal of sewage, garbage, waste and storm water,
3. Used or useful in connection with the generation, production, transmission, and distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, and power for public and private uses, together with all parts of any such undertaking and all appurtenances thereto including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants, plants for the incineration of garbage, intercepting sewers, trunk connection and other sewer and water mains, filtration works, pumping stations, and equipment. (Ex. Sess. 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2; 1951, c. 703, s. 1; 1953, c. 901, ss. 4, 5; c. 922, s. 1; 1965, c. 997; 1969, c. 1118, s. 1.)

Local Modification.—City of Thomasville, as to subdivision (6) b: 1969, c. 420.

Editor's Note.—

The 1965 amendment rewrote the first sentence in subdivision (4).

The 1969 amendment again rewrote the first sentence of subdivision (4), inserted present subdivision (5) and renumbered former subdivision (5) as (6).

As the rest of the section was not changed by the amendments, only subdivisions (4), (5) and (6) are set out.

Repeal of Section.—Session Laws 1971, c. 780, s. 14, provides that this section shall be repealed July 1, 1973.

Applied in Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

Cited in Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

§ 160-415. Additional powers.

(7) To pledge all or part of any proceeds derived from the use of on-street parking meters to the payment of

a. The cost of operating, maintaining and improving parking facilities and

b. The principal of and the interest on any revenue bonds issued for parking facilities.

(1969, c. 1118, s. 2.)

Editor's Note.—

The 1969 amendment rewrote subdivision (7).

As the rest of the section was not changed by the amendment, only subdivision (7) is set out.

Repeal of Section.—Session Laws 1971, c. 780, s. 14, provides that this section shall be repealed July 1, 1973.

Section Is Integral Part of Local Bond Issue. See Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

Municipalities May Purchase Hydroelectric Systems by Sale of Revenue Bonds.—It is clear that the General Assembly has by general enactment of the Revenue Bond Act of 1938 authorized municipalities to acquire by purchase revenue-producing properties of various kinds, including hydroelectric plants or systems or works or properties, and to finance such purchase with funds derived from the sale of revenue bonds, payable solely out of the revenues from the undertaking. Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

§ 160-416. Procedure for authorization of undertaking and revenue bonds; obtaining funds in advance of delivery of bonds sold to United States or agency thereof.—The acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking, and the issuance, in anticipation of the collection of the revenues of such undertaking, of bonds to provide funds to pay the cost thereof, may be authorized under this article by resolution or resolutions of the governing body which may be adopted at a regular or special meeting by a majority of the members of the governing body. Unless otherwise provided therein, such resolution or resolutions shall take effect immediately and need not be laid over or published or posted. The governing body in determining such cost may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses, and interest, which it is estimated will accrue during the construction period and for eighteen months thereafter, on money borrowed or which it is estimated will be borrowed pursuant to this article.

At any time or from time to time prior to actual delivery of bonds sold to the United States of America, or to an agency thereof, the governing body may, by resolution adopted as hereinabove provided, authorize the borrowing of money from the United States of America, or from such agency, by execution of a request for advance of funds repayable from the sale proceeds of such bonds. The governing body shall cause a certified copy of each such resolution and a statement as to amount of advance made pursuant thereto, its date and interest rate, if any, to be filed with the Local Government Commission before said delivery, and the State Treasurer is hereby authorized to apply, at the time of delivery, proceeds from sale of the bonds to payment of the aggregate principal amount of all such advances and interest accrued thereon, if any. (Ex. Sess. 1938, c. 2, s. 4; 1967, c. 711, s. 1; 1969, c. 1118, s. 3.)

Editor's Note. — The 1967 amendment added the second paragraph.

The 1969 amendment substituted "eighteen months" for "six months" in the last sentence of the first paragraph.

Repeal of Section.—Session Laws 1971, c. 780, s. 14, provides that this section shall be repealed July 1, 1973.

Cited in Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

§ 160-417. Bond provisions.—Revenue bonds may be issued under this article in one or more series; may bear such date or dates, may mature at such time or times, not exceeding forty years from their respective dates, or, in the case of a single registered bond, may be payable in installments; may bear interest at such rate or rates, payable at such time or times; may be payable in such medium of payment; at such place or places; may be in such denomination or denominations; may be in such form either coupon or registered; may carry such registration, conversion, and exchangeability privileges; may be subject to such terms of redemption with or without premium; may be declared or become due before the maturity date thereof; may be executed in such manner, and may contain such terms, covenants, assignments, and conditions as the resolution or resolutions authorizing the issuance of such bonds may provide. All bonds issued under this article bearing the signature of officers in office on the date of the signing thereof shall be valid and binding notwithstanding that before the delivery thereof and payment therefor, such officers whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. Pending the preparation of the definitive bonds, interim receipts, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds to be issued under this article. Said bonds and coupons and said interim receipts shall be negotiable for all purposes, except as restricted by registration, and shall be and are hereby declared to be nontaxable for any and all purposes. (Ex. Sess. 1938, c. 2, s. 5; 1949, c. 1081; 1967, c. 100, s. 1; c. 711, s. 2; 1969, c. 688, s. 1.)

Editor's Note.—

The first 1967 amendment substituted "forty years" for "thirty-five years" near the beginning of the section.

The second 1967 amendment inserted "or, in the case of a single registered bond, may be payable in installments" near the beginning of the section.

The 1969 amendment deleted "not exceeding six per centum (6%) per annum" following "rate or rates" near the middle of the first sentence.

Repeal of Section.—Session Laws 1971, c. 780, s. 14, provides that this section shall be repealed July 1, 1973.

§ 160-418: Repealed by Session Laws 1971, c. 780, s. 14, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 160-419: Repealed by Session Laws 1971, c. 780, s. 14, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 160-420: Repealed by Session Laws 1971, c. 780, s. 14, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Section Is Integral Part of Local Bond Issue.—See Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

§ 160-421. Approval of State agencies and sale of bonds by Local Government Commission.—All revenue bonds issued pursuant to this article shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by that Commission, except that the said Commission may sell any bonds issued pursuant to this article to the United States of America, or any agency thereof, at private sale and without advertisement, and except, further, that upon the filing with said Commission of a resolution of the governing body of a municipality requesting that its revenue bonds issued pursuant to this article be sold at private sale and without advertisement and upon the approval of such request by said Commission, such bonds may be sold by said Commission at private sale and without advertisement to any purchaser or purchasers thereof, such sale to be for such price as said Commission shall determine to be for the best interests of the municipality and as shall be approved by the governing body of the municipality. It shall not be necessary for any municipality proceeding under this article to obtain any other approval, consent, or authorization of any bureau, board, commission, or like instrumentality of the State for the construction of an undertaking; provided, however, that existing powers and duties of the State Board of Health shall continue in full force and effect; and provided, further, that no municipality shall construct any systems, plants, works, instrumentalities, and properties used or useful in connection with the generation, production, transmission, and distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, and power for public and private usage without having first obtained a certificate of convenience and necessity from the North Carolina Utilities Commission, except that this requirement for a certificate of convenience and necessity shall not apply to any such undertaking defined in this proviso which has been authorized or the bonds for which have been authorized by any general, special, or local law enacted prior to April 21, 1949. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081; 1967, c. 555; 1969, c. 688, s. 2.)

Editor's Note.—

The 1967 amendment added to the first sentence the provisions as to sale of bonds at private sale upon the filing of a resolution of the governing body of a municipality requesting such sale.

The 1969 amendment deleted, at the end of the first sentence, a provision to the effect that no such sale should be made at a price so low as to require the payment of interest on the money received therefor at more than six per centum per annum, and providing the manner of computation of such interest.

Repeal of Section.—Session Laws 1971, c. 780, s. 14, provides that this section shall be repealed July 1, 1973.

Stated in Keeter v Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965)

§ **160-421.1. Revenue refunding bonds.**—A municipality is hereby authorized to provide for the issuance of revenue refunding bonds of the municipality for the purpose of refunding any revenue bonds then outstanding which shall have been issued under the provisions of this article and any revenue bonds then outstanding issued by such municipality under other than the provisions of this article for an undertaking the revenues of which are pledged to the payment of such bonds, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the municipality, for the combined purpose of refunding any such bonds and to finance in whole or in part the reconstruction, improvement, betterment or extension of the undertaking for which the bonds to be refunded shall have been issued, or the acquisition, construction, reconstruction, improvement, betterment or extension of any undertaking combined or to be combined with the undertaking for which the bonds to be refunded shall have been issued.

The issuance of such bonds, the maturities and other details thereof, and the rights, duties and obligations of the municipality in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable. (1953, c. 692; 1969, c. 1118, s. 4.)

Editor's Note. — The 1969 amendment rewrote the first paragraph.

Repeal of Section.—Session Laws 1971, c. 780, s. 14, provides that this section shall be repealed July 1, 1973.

§ **160-422**: Repealed by Session Laws 1971, c. 780, s. 14, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **160-424**: Repealed by Session Laws 1971, c. 780, s. 14, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 34A.

Bonds to Finance Sewage Disposal System.

§ **160-424.1**: Repealed by Session Laws 1971, c. 780, s. 15, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Stated in McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

§§ **160-424.2 to 160-424.8**: Repealed by Session Laws 1971, c. 780, s. 15, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

SUBCHAPTER V. CAPITAL RESERVE FUNDS.

ARTICLE 35.

Capital Reserve Funds.

§§ **160-425 to 160-430**: Repealed by Session Laws 1971, c. 780, s. 16, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **160-431. Investments.**—The cash balance, or parts thereof, of the capital reserve fund may be deposited at interest or invested as provided by G.S. 159-28.1. (1957, c. 863, s. 1; 1967, c. 798, s. 2.)

Editor's Note.—The 1967 amendment rewrote this section.

Repeal of Section.—Session Laws 1971, c. 780, s. 16, provides that this section shall be repealed July 1, 1973.

§ **160-432 to 160-434**: Repealed by Session Laws 1971, c. 780, s. 16, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

SUBCHAPTER VI. EXTENSION OF CORPORATE LIMITS.

ARTICLE 36.

Extension of Corporate Limits.

Part 1. In General.

§ **160-445. Procedure for adoption of ordinance extending limits; effect of adoption when no election required; public hearing and notice thereof.**—After public notice has been given by publication once a week for four successive weeks in a newspaper in the county with a general circulation in the municipality, or if there be no such paper, by posting notice in five or more public places within the municipality, describing by metes and bounds the territory to be annexed, thus notifying the owner or owners of the property located in such territory, that a session of the municipal legislative body will meet for the purpose of considering the annexation of such territory to the municipality, the governing body of any municipality is authorized and empowered to adopt an ordinance extending its corporate limits by annexing thereto any contiguous tract or tracts of land not embraced within the corporate limits of some other municipality. Provided, that it shall be essential and necessary to the validity of any ordinance extending the corporate limits of any municipality by annexation, pursuant to this section, to actually hold a public hearing pursuant to the notice herein required, and that a statement by or on behalf of the municipal governing body, of the purpose or reasons for the proposed extension of the corporate limits be made at the beginning of the public hearing, and that reasonable opportunity to be heard be given any who attend such public hearing with regard thereto. The public notice shall (i) fix the date, hour and place of the public hearing, and (ii) describe clearly the boundaries of the area under consideration. Then from and after the date of the adoption of such ordinance, unless an election is required as herein provided, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in said city or town and shall be entitled to the same privileges and benefits as other parts of said city or town.

The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the date of annexation. (1947, c. 725, s. 1; 1967, c. 929.)

Editor's Note.—

The 1967 amendment added the second and third sentences.

Annexation Renders Ineffectual Zoning Authority of Prior Municipality.—Where property within the zoning authority of one municipal corporation is lawfully annexed by another municipal corporation, the zoning authority of the prior municipality becomes ineffectual immediately upon the annexation. Taylor v. Bowen, 272 N.C. 726, 158 S.E.2d 837 (1968).

§ 160-452. Annexation by petition.

Local Modification.—City of Fayetteville: 1969, c. 715.

Voluntary Procedure Simpler and Quicker Than Involuntary. — Voluntary procedure initiated by the landowners and future municipal taxpayers has understandably been made simpler and quicker than the involuntary annexation procedures. Town of Hudson v. City of Lenoir, 279 N.C. 156, 181 S.E.2d 443 (1971).

Voluntary Annexation Injects Element of Choice. — The variations in procedural requirements with respect to voluntary and involuntary annexation make it possible for property owners in the affected area to inject an element of choice as to which municipality will govern them. Town of Hudson v. City of Lenoir, 279 N.C. 156, 181 S.E.2d 443 (1971).

Undeveloped Lands Should Only Be Annexed on Petition.—Large tracts of agricultural or vacant lands, where no evidence of urban development can be shown, should not be annexed in any event, except upon petition of the landowners. Lithium Corp. of America, Inc v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Part 2. Municipalities of Less than 5,000.

§ 160-453.1. Declaration of policy.

Proceeding Is Summary.—A proceeding by a municipality to annex territory pursuant to this part is summary in nature. Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

And the material statutory requirements must be complied with. Southern Ry. v Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

Voluntary Procedure Made Simpler and Quicker Than Involuntary. — The voluntary procedure initiated by the landowners and future municipal taxpayers has understandably been made simpler and quicker than the involuntary annexation procedures. Town of Hudson v. City of Lenoir, 279 N.C. 156, 181 S.E.2d 443 (1971).

Voluntary Annexation Injects Element of Choice.—The variations in procedural requirements with respect to voluntary and involuntary annexation make it possible for property owners in the affected area to inject an element of choice as to which municipality will govern them. Town of Hudson v. City of Lenoir, 279 N.C. 156, 181 S.E.2d 443 (1971).

Applied in Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N C 532, 135 S.E.2d 574 (1964); Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967); Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496 (1969).

§ 160-453.3. Prerequisites to annexation; ability to serve; report and plans.

Local Modification.—Franklin: 1969, c. 1232.

Local Modification Held Unconstitutional. — Chapter 1189, Session Laws 1963, amending paragraph b of subdivision (3) of this section solely as it applies to the town of Beaufort and providing that a municipality shall not be required to extend sewage outfalls into an area annexed by it in the event that the municipal sewerage system shall have been declared a source of unlawful pollution is a local act relating to health and sanitation within the meaning of N.C. Const., Art. II, § 24, and is unconstitutional and void. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967); Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

A second public hearing after amendment is not required by this section. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496 (1969).

Failure to Call for Increase in Personnel in Plans.—Plans for services to the annexed area are not defective in failing to call for any significant increase in personnel where the record is devoid of evidence showing any need for increased personnel. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496 (1969).

Remedy Where Municipality Has Not Carried Out Service Plans Adopted under Subdivision (3). — The statutory remedy for owners of property in annexed territory where the municipality has not followed through on its service plans adopted under the provisions of subdivision (3) of this section and subsection (e) of § 160-453.5 is by writ of mandamus. Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

§ 160-453.4. Character of area to be annexed.

This section was not copied from the laws of other states, but is a result of a study and recommendations made by the Municipal Government Study Commission, which was established in accordance with Joint Resoluton 51 of the General Assembly of 1957. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Violation of Statute to Attempt Annexation of Area in Another Municipality. — Any new or amended proceeding by a town correcting all procedural irregularities would be an exercise in futility after the disputed area became a part of another city, because after that date any attempt by the town to annex the disputed area would be in violation of this statute, which prohibits the annexation of an area already included within the boundary of another incorporated municipality. Town of Hudson v. City of Lenoir, 279 N.C. 156, 181 S.E.2d 443 (1971).

Two Tests Provided for Determining Availability. — The General Assembly adopted a standard containing two tests for determining availability for annexation: (1) The use test—that not less than 60% of the lots and tracts in the area must be in actual use, other than for agriculture, and (2) the subdivision test—not less than 60% of the acreage which is in residential use, if any, and is vacant must consist of lots and tracts of five acres or less in size. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

The statutory standard consists of two tests for determining availability of an area for annexation: (1) The use test, which requires that not less than 60% of lots and tracts in the area must be in actual use, other than for agriculture, and (2) the subdivision test, which requires that not less than 60% of the acreage which is in residential use, if any, and is vacant must consist of lots and tracts of five acres or less in size. Both tests must be met in order for an area to meet the statutory standard. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496 (1969).

Both Tests Must Be Complied with.—The fact that the General Assembly connected the two test clauses in subsection (c) of this section with the conjunctive "and," and the clear abuses and hardships which a literal application of the use test, if alone applied, would produce, leads to the conclusion that the legislative intent is that both tests be complied with. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

But Application of Both Tests May Cause Absurd Results in Extreme Cases.—Literal insistence upon the application of both tests in subsection (c) might in some extreme and improbable circumstances bring about absurd results adverse to municipalities. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

"Use" means "to put into service" under subsection (c). Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

Tract Held for Future Development Is Not "Used."—Where about a tenth of a tract of land, marked off by a bumper strip or barrier, is used for parking, and the rest of the tract is graded and held by the owner for possible future industrial development, the vacant part of the tract is not "used" for industrial purposes within the purview of subsection (c). Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

Classification of Tract As in Industrial Use.—See Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496 (1969).

Determining What Is a "Lot". — There are several methods which can be used in determining what is a lot in making an appraisal of an area to be annexed. One is to count each numbered lot separately. Another is to consider a landlocked lot as part of the lot in front of it and group the two lots—the landlocked lot and the one providing it with access to a street—as being a single lot. A third method would be to consider a group of lots in single ownership and used for a single purpose as being a tract within the meaning of the statute, and count tracts rather than lots. Any one of these methods would be "calculated to provide reasonably accurate results" as required by § 160-453.10. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496 (1969).

It is not unreasonable and beyond the statutory definition to classify a landlocked lot and its fronting lot in single ownership as a single lot in residential use where only the fronting lot contains "a habitable dwelling unit." Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496 (1969).

Reason for Judicial Review.—The difficulties of applying the standards of this section in extreme cases are the reason the Municipal Government Study Commission recommended a provision for court review, set out in § 160-453.6, to determine whether the agency making the decision made a reasonable decision in accord with statutory standards. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Nothing to Review Unless Compliance Is in Doubt. — If a municipality clearly complies with the standards of subsection (c) of this section, there is nothing to review with respect to the availability of an area proposed for annexation. Where compliance is in doubt, the determination must be made upon the facts in the particular case. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

§ 160-453.5. Procedure for annexation.

(h) Remedies for Failure to Provide Services.—If, not earlier than one year from the effective date of annexation, and not later than fifteen months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of §§ 160-453.3 (3) and 160-453.5 (e), such person may apply for a writ of mandamus under the provisions of article 40, chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of § 160-453.3 (3) a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of § 160-453.3 (3) a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

(1) If the plans submitted under the provisions of § 160-453.3 (3) c require the construction of major trunk water mains and sewer outfall lines and

(2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality. (1959, c. 1010, s. 5; 1967, c. 1226, s. 1.)

Editor's Note. — The 1967 amendment substituted "writ" for "unit" near the beginning of the last sentence in subsection (h). Section 4 of the amendatory act provides that it shall be construed as declaring the law as it existed prior to the enactment of the 1967 act and not as modifying the law.

As only subsection (h) was affected by the amendment, the rest of the section is not set out.

Article 40, Chapter 1, referred to in the first sentence of subsection (h), was repealed by Session Laws 1967, c. 954, s. 4.

Annexed Areas Need Not Be Contiguous to Each Other.—If the areas to be annexed meet the standards prescribed, it does not matter whether they be contiguous. Subsection (g) of this section simply alleviates the necessity for separate annexation proceedings where areas to be annexed are adjacent to the muncipality but not adjacent to each other and specifically provides that annexation procedures may be simultaneously instituted and carried forward. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496 (1969).

But Contiguous Areas Are Not Excluded from Annexation.—Subsection (g) of this section is not interpreted to exclude annexation of areas contiguous to the municipality which are also contiguous to each other. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496 (1969).

Where annexation is completed without being challenged in the manner prescribed by § 160-453.6, it becomes an accomplished fact and the remedies of property owners and citizens within the annexed areas are those provided in subsection (h) of this section. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

Remedy Where Municipality Has Not Carried Out Service Plans Adopted under Subsection (e). — The statutory remedy for owners of property in annexed territory where the municipality has not followed through on its service plans adopted under the provisions of subdivision (3) of § 160-453.3 and subsection (e) of this section is by writ of mandamus. Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

Time for Bringing Action for Mandamus. — The owner of property within territory annexed by a municipality may bring an action for mandamus after the expiration of one year from the effective date of annexation and prior to the expiration of 15 months from such date, to compel the municipality to follow through on its plans for furnishing essential municipal services to the area annexed in accordance with the plans filed in the proceedings. Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

Cited in Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

§ 160-453.6. Appeal.

Section Provides Only Procedure Available to Property Owners to Prevent Annexation.—The statutory remedy provided by this section is the only procedure available to property owners to prevent the annexation provided by an annexation ordinance. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

Property Owner May Petition for Review within Thirty Days after Passage of Ordinance.—Any person owning property in annexed territory has a right, within thirty days following the passage of the annexation ordinance, to challenge its validity by petition for review filed in the superior court. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

Thereafter, Remedies Are Those Provided in Subsection (h) of § 160-453.5. — Where annexation is completed without being challenged in the manner prescribed by this section, it becomes an accomplished fact and the remedies of property owners and citizens within the annexed areas are those provided in subsection (h) of § 160-453.5. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

And Independent Action to Have Ordinance Declared Void Ab Initio May Not Be Maintained.—An owner of land in an area annexed by a municipality may attack the validity of the annexation ordinance only by filing a petition within 30 days following the passage of the ordinance seeking a review of the action of the municipal board of commissioners, in accordance with the procedure provided by this section, and an independent action instituted some 22 months after the adoption of the ordinance and seeking to have it declared void ab initio will be dismissed. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

Reason for Judicial Review.—The difficulties of applying the standards of § 160-453.4 in extreme cases are the reason the Municipal Government Study Commission recommended a provision for court review, set out in this section, to determine whether the agency making the decision made a reasonable decision in accord with statutory standards. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Nothing to Review if Compliance Is Clear.—If a municipality clearly complies with the standards of subsection (c) of § 160-453.4, there is nothing to review with respect to the availability of an area proposed for annexation. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Where compliance is in doubt, the determination must be made upon the facts in the particular case with respect to the availability of an area proposed for annexation under subsection (c) of § 160-453.4. Lithium Corp. of America, Inc. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Failure to Allege Material Injury Not Fatal.—While the better practice would be to allege specifically that the petitioner will suffer material injury by reason of the failure of respondent to comply with the statutory procedures regarding annexation, the failure to do so is not fatal, particularly if the petition contains allegations from which material injury can be implied. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496 (1969).

Applied in Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967); Town of Hudson v. City of Lenoir, 279 N.C. 156, 181 S.E.2d 443 (1971).

Cited in Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

§ 160-453.9. Definitions.

Classification of Lots in Single Ownership as Single Lot.—It is not unreasonable and beyond the statutory definition to classify a landlocked lot and its fronting lot in single ownership as a single lot in residential use where only the fronting lot contains "a habitable dwelling unit." Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496 (1969).

§ 160-453.10. Land estimates.

Determining What Is a "Lot".—There are several methods which can be used in determining what is a lot in making an appraisal of an area to be annexed. One is to count each numbered lot separately. Another is to consider a landlocked lot as part of the lot in front of it and group the two lots—the landlocked lot and the one providing it with access to a street as being a single lot. A third method would be to consider a group of lots in single ownership and used for a single purpose as being a tract within the meaning of the statute, and count tracts rather than lots. Any one of these methods would be "calculated to provide reasonably accurate results" as required by this section. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496 (1969).

§ 160-453.11. Effect of Part on other laws.—From and after July 1, 1959, this part shall be in full force and effect with respect to all municipalities having a population of less than five thousand (5,000) persons according to the last preceding federal decennial census. The provisions of part 1 of article 36 of chapter 160 of the General Statutes of North Carolina shall remain in full force and effect with respect to such municipalities as an alternative procedure until June 30, 1962. From and after July 1, 1962, all the provisions of part 1 of article 36 of chapter 160 of the General Statutes of North Carolina, with the exception of § 160-452 as it exists at the time of the passage of this part or as it may be amended at this session of the General Assembly, shall be repealed. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part shall be controlling. (1959, c. 1010, s. 11; 1961, c. 655, s. 1; 1967, c. 1226, s. 2.)

Local Modification.—Cumberland: 1969, c. 1058, was repealed, subject to referendum, by 1971, c. 620.

Editor's Note.—

The 1967 amendment inserted "part 1 of" preceding "article" in the second and third sentences. Section 4 of the amendatory act provides that it shall be construed as declaring the law as it existed prior to the enactment of the 1967 act and not as modifying the law.

§ 160-453.12. Counties excepted from Part; Part 1 continued for such counties.—The provisions of this Part shall not apply to the following counties: Alleghany, Edgecombe, Halifax, Iredell, Nash, except for the towns of Nashville, Spring Hope, Castalia and Middlesex, Pender, Perquimans and Person, provided the provisions of this Part shall apply to the towns of Whitakers, Sharpsburg, and Battleboro in Edgecombe and Nash Counties. This Part shall not apply to the town of King in Stokes County, nor to the town of Pilot Mountain in Surry County.

Notwithstanding any other provisions of this Part, Part 1 of Article 36 of Chapter 160 of the General Statutes of North Carolina and specifically G.S. 160-452 as the same may be rewritten or amended, shall remain in full force and effect as to the counties herein named. (1959, c. 1010, s. 12; 1961, c. 1081; 1965, cc. 782, 875; 1967, c. 156, s. 1; 1969, c. 438, s. 1; c. 1058, s. 1; c. 1232; 1971, c. 28.)

Editor's Note.—

The first 1965 amendment inserted "except for the towns of Nashville, Spring Hope, Castalia and Middlesex" between

"Nash" and "Pender" and substituted "towns of Whitakers, Sharpsburg, and" for "town of," all in the first paragraph.

The second 1965 amendment added the last sentence in the first paragraph.

Chapter 156, Session Laws 1967, effective July 1, 1967, deleted "Randolph" from the list of counties in the first paragraph.

The first 1969 amendment struck "Harnett" from the list of counties in the first paragraph.

The second 1969 amendment deleted "Cumberland" and the third 1969 amendment deleted "Franklin" from the list of counties in the first paragraph.

Chapter 1058, Session Laws 1969, which deleted "Cumberland" from the list of counties in the first paragraph, was repealed, subject to referendum, by c. 620, Session Laws 1971, s. 2. However, s. 1 of c. 620, Session Laws 1971, provides: "Parts 1, 2 and 3 of Article 36 of Chapter 160 of the General Statutes shall be applicable to Cumberland County." The 1971 act will be voted on at an election to be held on the same day as the special election on the consolidation of the Fayetteville City and Cumberland County Boards of Education provided for in SB 616 of the 1971 Session of the General Assembly (Session Laws 1971, c. 554).

The 1971 amendment added "nor to the town of Pilot Mountain in Surry County" in the second sentence.

Chapter 1056, Session Laws 1967, as amended by c. 455, Session Laws 1969, struck out "Halifax" from the list of counties in the first paragraph. Chapter 1056, as amended, did not become effective since, at a special election held in Halifax County on the same date as the 1970 primary election, a majority of the votes were cast "against 1959 annexation laws."

Cited in Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964); Town of Hudson v. City of Lenoir, 279 N.C. 156, 181 S.E.2d 443 (1971).

Part 3. Municipalities of 5,000 or More.

§ 160-453.15. Prerequisites to annexation; ability to serve; report and plans.

Local Modification.—Franklin: 1969, c. 1232.

Cited in In re Annexation Ordinance, 278 N.C. 641, 180 S.E.2d 851 (1971).

§ 160-453.16. Character of area to be annexed.

Cited in In re Annexation Ordinance, 278 N.C. 641, 180 S.E.2d 851 (1971).

§ 160-453.17. Procedure for annexation.

The extension by a city of sewer lines and other services into the annexed area, pursuant to the plan of annexation, is not a condition precedent to annexation, the statutory remedy for failure to extend such services being an application, by a person owning property in the annexed territory, for a writ of mandamus to compel such performance of the plan. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

In reviewing the procedure followed by a municipal governing board in an annexation proceeding the question whether the municipality is then providing services pursuant to the plan of annexation is not before the court, and extension of services into an annexed area in accordance with the promulgated plan is not a condition precedent to annexation. In re Annexation Ordinance, 278 N.C. 641, 180 S.E.2d 851 (1971).

Application of Municipal Privilege License Taxes to Newly Annexed Territory.—See opinion of Attorney General to Mr. Edwin C. Ipock, Goldsboro City Attorney, 2/24/70.

§ 160-453.18. Appeal.

Slight irregularities will not invalidate annexation proceedings if there has been substantial compliance with all essential provisions of the law. In re Annexation Ordinance, 278 N.C. 641, 180 S.E.2d 851 (1971).

Absolute and literal compliance with a statute enacted describing the conditions of annexation is unnecessary; substantial compliance only is required, because absolute and literal compliance with the statute would result in defeating the purpose of the statute in situations where no one has been or could be misled. In re Annexation Ordinance, 278 N.C. 641, 180 S.E.2d 851 (1971).

Adverse Effect upon Financial Interests Is Not Grounds for Attacking Annexation Proceedings. — A property owner can attack annexation proceedings only upon the grounds specified in the statutes and he cannot successfully resist annexation because a city ordinance will adversely affect his financial interest. In re Annexation Ordinance, 278 N.C. 641, 180 S.E.2d 851 (1971).

Which Puts Burden on Petitioners, etc.—

The burden is upon plaintiffs, who appealed from the annexation ordinance, to show by competent evidence that city in fact failed to meet the statutory requirements or that there was irregularity in the proceedings which materially prejudiced their substantive rights. In re Annexation Ordinance, 278 N.C. 641, 180 S.E.2d 851 (1971).

§ 160-453.19. Annexation recorded.

Requirement That Map and Ordinance Be Recorded Is Not Condition Precedent to Annexation.—The requirement in this section that a map of the annexed territory, together with a certified copy of the ordinance, be recorded in the office of the register of deeds and in the office of the Secretary of State is, obviously, not a condition precedent to the effective annexation of the territory but the imposition of a duty to be performed after the annexation is complete. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

§ 160-453.23. Effect of part on other laws.—From and after July 1, 1959, this part shall be in full force and effect with respect to all municipalities having a population of five thousand (5,000) or more persons according to the last preceding federal decennial census. The provisions of part 1 of article 36 of chapter 160 of the General Statutes of North Carolina shall remain in full force and effect with respect to such municipalities as an alternative procedure until June 30, 1962. From and after July 1, 1962, all the provisions of part 1 of article 36 of chapter 160 of the General Statutes of North Carolina, with the exception of § 160-452 as it exists at the time of the passage of this part or as it may be amended at this session of the General Assembly, shall be repealed. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part shall be controlling. (1959, c. 1009, s. 11; 1961, c. 655, s. 2; 1967, c. 1226, s. 3.)

Editor's Note.—

The 1967 amendment inserted "part 1 of" preceding "article" in the second and third sentences. Section 4 of the amendatory act provides that it shall be construed as declaring the law as it existed prior to the enactment of the 1967 act and not as modifying the law.

Authorities Granted by Part 2 in Full Force on and after July 1, 1959. — Although chapter 1009 of the Session Laws of 1959 provided that the laws theretofore governing the annexation of territory by municipalities should remain in force to 1 July 1962, the authorities granted to municipalities by the 1959 act were and have been in full force on and after 1 July 1959. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

§ 160-453.24. Counties excepted from Part; Part 1 continued for such counties.—The provisions of this part shall not apply to the following counties: Columbus, Halifax, Pender and Perquimans.

Notwithstanding any other provisions of this part, part 1 of article 36 of chapter 160 of the General Statutes of North Carolina and specifically G.S. 160-452, as the same may be rewritten or amended, shall remain in full force and effect as to the counties herein named. (1959, c. 1009, s. 12; 1961, cc. 468, 787; 1963, c. 728; 1967, c. 156, s. 2; 1969, c. 438, s. 2; c. 1058, s. 1; c. 1232.)

Local Modification.—City of Dunn: 1965, c. 1075, was repealed by 1969, c. 818, s. 4.

Editor's Note.—

Chapter 156, Session Laws 1967, effective July 1, 1967, deleted "Randolph" from the list of counties.

The first 1969 amendment deleted "Harnett" from the list of counties.

The second 1969 amendment deleted "Cumberland" and the third 1969 amendment deleted "Franklin" from the list of counties.

Chapter 1058, Session Laws 1969, which deleted "Cumberland" from the list of counties in the first paragraph, was repealed, subject to referendum, by c. 620, Session Laws 1971, s. 2. However, s. 1 of c. 620, Session Laws 1971, provides: "Parts 1, 2 and 3 of Article 36 of Chapter 160 of the General Statutes shall be applicable to

Cumberland County." The 1971 act will be voted on at an election to be held on the same day as the special election on the consolidation of the Fayetteville City and Cumberland County Boards of Education provided for in SB 616 of the 1971 Session of the General Assembly (Session Laws 1971, c. 554).

Chapter 1056, Session Laws 1967, as amended by c. 455, Session Laws 1969, deleted "Halifax" from the list of counties. Chapter 1056, as amended, did not become effective since, at a special election held in Halifax County on the same date as the 1970 primary election, a majority of the votes were cast "against 1959 annexation laws."

SUBCHAPTER VII. URBAN REDEVELOPMENT.

ARTICLE 37.

Urban Redevelopment Law.

§ 160-454. Short title.

Editor's Note. — For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

Constitutionality.—

The constitutionality of this article has been upheld by the Supreme Court. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

A redevelopment commission is a municipal corporation for the purpose of tax exemption. Redevelopment Comm'n v. Guilford County, 274 N.C. 585, 164 S.E.2d 476 (1968).

A redevelopment commission is a municipal corporation and exempt from ad valorem taxation. Redevelopment Comm'n v. Guilford County, 1 N.C. App. 512, 162 S.E.2d 108 (1968).

A redevelopment commission, just as any other municipal corporation, is to be taxed for property held by it for purposes other than governmental. Redevelopment Comm'n v. Guilford County, 1 N.C. App. 512, 162 S.E.2d 108 (1968).

Properties owned by a redevelopment commission, both improved and unimproved, from which income is being derived are subject to ad valorem taxes. It is only the nonincome producing properties, both improved and unimproved, which are to be exempt from taxation. Redevelopment Comm'n v. Guilford County, 1 N.C. App. 512, 162 S.E.2d 108 (1968).

Sufficiency of Condemnation Petition.— A petition to condemn land for urban renewal is sufficient under the Rules of Civil Procedure to state a claim for relief, where it gives notice of the nature and basis of the petitioners' claim and the type of case brought, and alleges generally the occurrence or performance of the conditions precedent required by Chapter 160, Article 37 (now Chapter 160A, Article 11), and Chapter 40, Article 2. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

A redevelopment commission must exercise the power of eminent domain pursuant to Chapter 160, Article 37 (now Chapter 160A, Article 11), and Chapter 40, Article 2, and in order to invoke this power the redevelopment commission must affirmatively allege compliance with the statutory requirements. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Cited in Hagins v. Redevelopment Comm'n, 275 N.C. 90, 165 S.E.2d 490 (1969); Hagins v. Redevelopment Comm'n, 1 N.C. App. 40, 159 S.E.2d 584 (1968); Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968); Chambers v. Redevelopment Comm'n, 2 N.C. App. 355, 163 S.E.2d 121 (1968).

§ 160-456. Definitions.

(1) "Area of operation"—The area within the territorial boundaries of the city or county for which a particular commission is created.

(2) "Blighted area" shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such

factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no area shall be considered a blighted area nor subject to the power of eminent domain, within the meaning of this article, unless it is determined by the planning commission that at least two thirds of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a blighted area; provided that if the power of eminent domain shall be exercised under the provisions of this article, the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(7) "Governing body"—In the case of a city or town, the city council or other legislative body. The board of county commissioners.

(9) "Municipality"—Any incorporated city or town, or any county.

(10) "Nonresidential redevelopment area" shall mean an area in which there is a predominance of buildings or improvements, whose use is predominantly nonresidential, and which, by reason of:

a. Dilapidation, deterioration, age or obsolescence of buildings and other structures,
b. Inadequate provisions for ventilation, light, air, sanitation or open spaces,
c. Defective or inadequate street layout,
d. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness,
e. Tax or special assessment delinquency exceeding the fair value of the property,
f. Unsanitary or unsafe conditions,
g. The existence of conditions which endanger life or property by fire and other causes, or
h. Any combination of such factors
    1. Substantially impairs the sound growth of the community,
    2. Has seriously adverse effects on surrounding development, and
    3. Is detrimental to the public health, safety, morals or welfare;

provided, no such area shall be considered a nonresidential redevelopment area nor subject to the power of eminent domain, within the meaning of this article, unless it is determined by the planning commission that at least one half of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a nonresidential redevelopment area; provided that if the power of eminent domain shall be exercised under the provisions of this article, the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(1967, c. 1249; 1969, c. 1208, s. 1.)

Editor's Note.—

The 1967 amendment substituted "property owner or owners or persons having an interest in property" for "respondent or respondents" in the last proviso in subdivision (2) and in the last proviso in subdivision (10).

The 1969 amendment inserted "or county" in subdivision (1), added "The board of county commissioners" at the end of subdivision (7) and "or any county" at the end of subdivision (9).

As the rest of the section was not affected by the amendments, it is not set out.

Opinions of Attorney General. — Mr. William I. Cochran, Jr., Executive Director, Redevelopment Commission of the City of Washington, 8/4/69.

Areas which are in fact "blighted" cannot be enlarged to include areas which are not in fact "blighted." Any other conclusion would vest a redevelopment commission with authority which the legislature has expressly denied it. Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

The legislature never intended to permit a planning commission or a redevelopment commission to include within the boundaries of a "blighted area" an area not meeting the statutory definition, even though the area might qualify as a nonresidential area, or as a rehabilitation, conservation and reconditioning area. Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

But Conditions May Be Corrected in Redevelopment Area Embracing Blighted and Other Defined Areas. — A planning commission may correct objectionable conditions within a redevelopment area, consisting of a blighted area, a nonresidential redevelopment area, and a rehabilitation, conservation and reconditioning area. Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

Property Must Be "Blighted" and Endanger Area for Condemnation in Rehabilitation, Conservation and Reconditioning Area.—In a "rehabilitation, conservation and reconditioning area," no individual tract, building or improvement shall be subject to the power of eminent domain, within the meaning of the Urban Redevelopment Law (§ 160-454 et seq.), unless it is "blighted" property and substantially contributes to the condition endangering the area. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

A trial court erred in dismissing an action to condemn land for urban renewal where there was no finding that the redevelopment commission failed to comply with the statutory procedures prerequisite to an exercise of the power of eminent domain by it, and there was no allegation, proof, or finding that the redevelopment commission arbitrarily abused its discretion or acted in bad faith in selecting the area in question. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

The court's findings that the property of respondents does not lie within a blighted area or within a nonresidential redevelopment area as defined in subdivision (2) is an insufficient basis for dismissal of the action. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Cited in Redevelopment Comm'n v. Grimes, 8 N.C. App. 376, 174 S.E.2d 839 (1970).

§ 160-457. Formation of commissions.

Applied in Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Cited in Redevelopment Comm'n v. Grimes, 8 N.C. App. 376, 174 S.E.2d 839 (1970).

§ 160-457.1. Alternative organization.—(a) In lieu of creating a redevelopment commission as authorized herein, the governing body of any municipality may, if it deems wise, either designate a housing authority created under the provisions of Chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission as prescribed herein, or undertake to exercise such powers, duties, and responsibilities itself. Any such designation shall be by passage of a resolution adopted in accordance with the procedure and pursuant to the findings specified in G.S. 160-457 (a) and (b). In the event a governing body designates itself to perform the powers, duties, and responsibilities of a redevelopment commission, then where any act or proceeding is required to be done, recommended, or approved both by a redevelopment commission and by the municipal governing body, then the performance, recommendation, or approval thereof once by the municipal governing body shall be sufficient to make such performance, recommendation, or approval valid and legal. In the event a municipal governing body designates itself to exercise the powers, duties, and responsibilities of a redevelopment commission, it may assign the administration of redevelopment policies, programs and plans to any existing or new department of the municipality.

(b) The governing body of any municipality which has prior to July 1, 1969 created, or which may hereafter create, a redevelopment commission may, in its discretion, by resolution abolish such redevelopment commission, such abolition to be effective on a day set in such resolution not less than 90 days after its adoption. Upon the adoption of such a resolution, the redevelopment commission of the municipality is hereby authorized and directed to take such actions and to execute such documents as will carry into effect the provisions and the intent of the resolution, and as will effectively transfer its authority, responsibilities, obligations, personnel, and property, both real and personal, to the municipality. Any municipality which abolishes a redevelopment commission pursuant to this subsection may, at any time subsequent to such abolition or concurrently therewith, exercise the authority granted by subsection (a) of this section.

On the day set in the resolution of the governing body:

(1) The redevelopment commission shall cease to exist as a body politic and corporate and as a public body;

(2) All property, real and personal and mixed, belonging to the redevelopment commission shall vest in, belong to, and be the property of the municipality;

(3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the redevelopment commission shall remain, vest in, and inure to the benefit of the municipality;

(4) All rentals, taxes, assessments, and any other funds, charges or fees, owing to the redevelopment commission shall be owed to and collected by the municipality;

(5) Any actions, suits, and proceedings pending against, or having been instituted by the redevelopment commission shall not be abated by such abolition, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the municipality shall be a party to all such actions, suits, and proceedings in the place and stead of the redevelopment commission and shall pay or cause to be paid any judgment rendered against the redevelopment commission in any such actions, suits, or proceedings, and no new process need be served in any such action, suit, or proceeding;

(6) All obligations of the redevelopment commission, including outstanding indebtedness, shall be assumed by the municipality, and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the municipality;

(7) All ordinances, rules, regulations and policies of the redevelopment commission shall continue in full force and effect until repealed or amended by the governing body of the municipality.

(c) Where the governing body of any municipality has in its discretion, by resolution abolished a redevelopment commission, pursuant to subsection (b) above, the governing body of such municipality may, at any time subsequent to the passage of a resolution abolishing a redevelopment commission, or concurrently therewith, by the passage of a resolution adopted in accordance with the procedures and pursuant to the findings specified in G.S. 160-457 (a) and (b), designate an existing housing authority created pursuant to Chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission. Where the governing body of any municipality designates, pursuant to this subsection, an existing housing authority created pursuant to Chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission, on the day set in the resolution of the governing body passed pursuant to subsection (b) of this section, or pursuant to subsection (c) of this section:

(1) The redevelopment commission shall cease to exist as a body politic and corporate and as a public body;

(2) All property, real and personal and mixed, belonging to the redevelopment commission or to the municipality as hereinabove provided in subsections (a) or (b), shall vest in, belong to, and be the property of the existing housing authority of the municipality;

(3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the redevelopment commission or in favor of the municipality as hereinabove provided in subsections (a) or (b), shall remain, vest in, and inure to the benefit of the existing housing authority of the municipality;

(4) All rentals, taxes, assessments, and any other funds, charges or fees owing to the redevelopment commission, or owing to the municipality as hereinabove provided in subsections (a) or (b), shall be owed to and collected by the existing housing authority of the municipality;

(5) Any actions, suits, and proceedings pending against or having been instituted by the redevelopment commission, or the municipality, or to which the municipality has become a party, as hereinabove provided in subsections (a) or (b), shall not be abated by such abolition but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the existing housing authority of the municipality shall be a party to all such actions, suits, and proceedings in the place and stead of the redevelopment commission, or the municipality, and shall pay or cause to be paid any judgments rendered in such actions, suits, or proceedings, and no new processes need be served in such action, suit, or proceeding;

(6) All obligations of the redevelopment commission, or the municipality as hereinabove provided in subsections (a) or (b), including outstanding indebtedness, shall be assumed by the existing housing authority of the municipality; and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the existing housing authority of the municipality;

(7) All ordinances, rules, regulations, and policies of the redevelopment commission, or of the municipality as hereinabove provided in subsections (a) or (b), shall continue in full force and effect until repealed and amended by the existing housing authority of the municipality.

(d) A housing authority designated by the governing body of any municipality to exercise the powers, duties and responsibilities of a redevelopment commission shall, when exercising the same, do so in accordance with Article 37 of Chapter 160 of the General Statutes. Otherwise the housing authority shall continue to exercise the powers, duties and responsibilities of a housing authority in accordance with Chapter 157 of the General Statutes. (1969, c. 1217, s. 1; 1971, c. 116, ss. 1, 2.)

Editor's Note. — The 1971 amendment added subsections (c) and (d).

§ **160-457.2. Creation of a county redevelopment commission.** — If the board of county commissioners of a county by resolution declares that blighted areas do exist in said county, and the redevelopment of such areas is necessary in the interest of public health, safety, morals, or welfare of the residents of such county, the county commissioners of said county are hereby authorized to create a separate and distinct body corporate and politic to be known as the redevelopment commission of said county by passing a resolution to create such a commission to function in the territorial limits of said county. Provided, however, that notice of the intent to consider passage of such a resolution or ordinance shall be published at least ten days prior to the meeting of the board of county commissioners for such purposes, and further provided that the redevelopment commission shall not function in an area where such a commission exists or in the corporate limits of a municipality without resolution of agreement by said municipality.

All of the provisions of article 37, chapter 160 of the General Statutes, shall be applicable to county redevelopment commissions, including the formation, appointment, tenure, compensation, organization, interest and powers as specified therein. (1969, c. 1208, s. 2.)

§ 160-457.3. Creation of a regional redevelopment commission.—If the board of county commissioners of two or more contiguous counties by resolution declare that blighted areas do exist in said counties and the redevelopment of such areas is necessary in the interest of public health, morals, or welfare of the residents of such counties, the county commissioners of said counties are hereby authorized to create a separate and distinct body corporate and politic to be known as the regional redevelopment commission by the passage of a resolution by each county to create such a commission to function in the territorial limits of the counties; provided, however, that notice of the intent to consider passage of such a resolution or ordinance shall be published at least ten days prior to the meeting of the board of county commissioners for such purposes, and further provided that the redevelopment commission shall not function in an area where such a commission exists or in the corporate limits of a municipality without resolution of agreement by the municipality.

The board of county commissioners of each county included in the regional redevelopment commission shall appoint one person as a commissioner and such a person may be appointed at or after the time of the adoption of the resolution creating the redevelopment commission. The board of county commissioners shall have the authority to appoint successors or to remove persons for misconduct who are appointed by them. Each commissioner to the redevelopment commission shall serve for a five-year term except that initial appointments may be for less time in order to establish a fair donation system of appointments. In the event that a regional redevelopment commission shall have an even number of counties, the Governor of North Carolina shall appoint a member to the commission from the area to be served. The appointed members as commissioners shall constitute the regional redevelopment commission and certification of appointment shall be filed with the Secretary of State as part of the application for charter.

All provisions of the "Urban Redevelopment Law" as defined in article 37 of chapter 160 of the General Statutes, shall apply to the creation and operation of a regional redevelopment commission, and where reference is made to municipality, it shall be interpreted to apply to the area served by the regional redevelopment commission. (1969, c. 1208, s. 3.)

§ 160-458. Appointment and qualifications of members of commission.—Upon certification of a resolution declaring the need for a commission to operate in a city or town, the mayor and governing board thereof, respectively, shall appoint, as members of the commission, not less than five nor more than nine citizens who shall be residents of the city or town in which the commission is to operate. The governing body may at any time by resolution or ordinance increase or decrease the membership of a commission, within the limitations herein prescribed. (1951, c. 1095, s. 5; 1971, c. 362, ss. 6, 7.)

Editor's Note. — The 1971 amendment substituted "not less than five nor more than nine" for "five" in the first sentence and added the second sentence.

§ 160-459. Tenure and compensation of members of commission.—The mayor and governing body shall designate overlapping terms of not less than one nor more than five years for the members who are first appointed. Thereafter, the term of office shall be five years. A member shall hold office until his successor has been appointed and qualified. Vacancies for the unexpired terms shall be promptly filled by the mayor and governing body. A member shall receive such compensation, if any, as the municipal governing board may provide for this service, and shall be entitled within the budget appropriation to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. (1951, c. 1095, s. 6; 1967, c. 932, s. 4; 1971, c. 362, s. 8.)

Editor's Note. — The 1967 amendment substituted "such compensation, if any, as the municipal governing board may provide" for "no compensation" and substituted "and" for "but" all in the last sentence.

The 1971 amendment rewrote the first sentence.

§ 160-460. Organization of commission.—The members of a commission shall select from among themselves a chairman, a vice-chairman, and such other officers as the commission may determine. A commission may employ a secretary, its own counsel, and such technical experts, and such other agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons. A majority of the members shall constitute a quorum for its meeting. Members shall not be liable personally on the bonds or other obligations of the commission, and the rights of creditors shall be solely against such commission. A commission may delegate to one or more of its members, agents or employees such of its powers as it shall deem necessary to carry out the purposes of this Article, subject always to the supervision and control of the commission. For inefficiency or neglect of duty or misconduct in office, a commissioner of a commission may be removed by the governing body, but a commissioner shall be removed only after a hearing and after he shall have been given a copy of the charges at least 10 days prior to such hearing and have had an opportunity to be heard in person or by counsel. (1951, c. 1095, s. 7; 1971, c. 362, s. 9.)

Editor's Note. — The 1971 amendment substituted "A majority of the" for "Three" at the beginning of the third sentence.

§ 160-462. Powers of commission.

(18) To perform redevelopment project undertakings and activities in one or more contiguous or noncontiguous redevelopment areas which are planned and carried out on the basis of annual increments. (1951, c. 1095, s. 9; 1961, c. 837, ss. 5, 7; 1969, c. 254, s. 1.)

Editor's Note.—

The 1969 amendment added subdivision (18).

As the other subdivisions were not affected by the amendment, they are not set out.

Strict Construction.—Statutes prescribing the procedure to condemn lands should be strictly construed. Redevelopment Comm'n v. Grimes, 8 N.C. App. 376, 174 S.E.2d 839 (1970).

Sufficiency of Condemnation Petition.—A petition to condemn land for urban renewal, is sufficient under the Rules of Civil Procedure to state a claim for relief, where it gives notice of the nature and basis of the petitioners' claim and the type of case brought, and alleges generally the occurrence or performance of the conditions precedent required by Chapter 160, Article 37 (now Chapter 160A, Article 11), and Chapter 40, Article 2. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

A redevelopment commission must exercise the power of eminent domain pursuant to Chapter 160, Article 37 (now Chapter 160A, Article 11), and Chapter 40, Article 2, and in order to invoke this power the redevelopment commission must affirmatively allege compliance with the statutory requirements. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Selection as to Route, Quantity, etc., Is Largely Discretionary. — Where the general power to condemn exists, the right of selection as to route, quantity, etc., is left largely to the discretion of the company or corporation, and does not become the subject of judicial inquiry except on allegations of fact tending to show bad faith on the part of the company or corporation or an oppressive and manifest abuse of the discretion conferred upon them by the law. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Area to Be Redeveloped May Contain Vacant Lands or Inoffensive Structures.—The fact that some of the lands in an area to be redeveloped under redevelopment laws are vacant lands or contain structures in themselves inoffensive or innocuous does not invalidate the taking of the property, or invalidate tne statute so permitting, according to the form of the contention in the particular case, usually on the ground that the action was justified as a necessary concomitant area, as compared to structure-by-structure rehabilitation. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Procedure to Acquire Property When Redevelopment Corporation and Landowner Unable to Agree. — When a redevelopment corporation, possessing the power of eminent domain under this section, is unable to agree with the owner for the purchase of property required for its purposes, the procedure to acquire the property is by a special proceeding as provided in Chapter 40, Article 2, except as modified by the provision of § 160-465. Redevelopment Comm'n v. Grimes, 8 N.C. App. 376, 174 S.E.2d 839 (1970).

The rule allowing evidence of value at times before or after the taking is analogous to the rule which allows evidence of the purchase price paid for property sometime prior to the date of taking. Wilson Redevelopment Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

Determining Fair Market Value.—In determining the fair market value of property taken in condemnation, it is generally regarded as competent to show the value of the property within a reasonable time before and/or after the taking as bearing upon its value at the time of the appropriation. The rule is necessarily one of variableness in the time limits, depending upon the nature of the property, its location and surrounding circumstances, and whether the evidence offered fairly points to its value at the time in question. Wilson Redevelopment Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

In determining whether evidence of the value at sometime prior to the taking is admissible to show fair market value at the time of the taking, the inquiry is whether under all the circumstances that appraisal fairly points to the value of the property at the time of the taking. Wilson Redevelopment Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

Sales prices of nearby property are admissible on cross-examination to test the witness' knowledge of values and for the purposes of impeachment. Wilson Redevelopment. Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

It would seem that the utmost freedom of cross-examination with reference to sales and sales prices in the vicinity should be accorded the landowner, subject to the right and duty of the presiding judge to exercise his sound discretion in controlling the nature and scope of the cross-examination in the interest of justice and in confining the testimony within the rules of competency, relevancy and materiality. It follows that the condemnor should be accorded similar freedom. Wilson Redevelopment Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

A trial court erred in dismissing an action to condemn land for urban renewal where there was no finding that the redevelopment commission failed to comply with the statutory procedures prerequisite to an exercise of the power of eminent domain by it, and there was no allegation, proof or finding that the redevelopment commission arbitrarily abused its discretion or acted in bad faith in selecting the area in question. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

The court's findings that the property of respondents does not lie within a blighted area or a nonresidential redevelopment area, as defined in § 160-456 (2), is an insufficient basis for dismissal of the action. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Role of Judicial Review Limited. — In determining whether a particular area may legally be selected for redevelopment, either under the terms of this statute, or in terms of the requirement that the particular project serve a "public use," the role of judicial review is severally limited by the rule that the finding of the redevelopment authority, or similar administrative agency, that a particular area is "blighted," that redevelopment serves a "public use," or the like, is not generally reviewable, unless fraudulent or capricious, or, in some instances, unless the evidence against the finding is overwhelming. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

§ 160-463. Preparation and adoption of redevelopment plans.

(c) A commission shall not acquire real property for a development project unless the governing body of the community in which the redevelopment project area is located has approved the redevelopment plan, as hereinafter prescribed; provided, however that the commission may acquire, through negotiation, specific pieces of property in the redevelopment area prior to the approval of such plan when the governing body finds that advance acquisition of such properties is in the public interest and specifically approves such action.

(d) The redevelopment commission's redevelopment plan shall include, without being limited to, the following:

(1) The boundaries of the area, with a map showing the existing uses of the real property therein;
(2) A land use plan of the area showing proposed uses following redevelopment;
(3) Standards of population densities, land coverage and building intensities in the proposed redevelopment;
(4) A preliminary site plan of the area;
(5) A statement of the proposed changes, if any, in zoning ordinances or maps;
(6) A statement of any proposed changes in street layouts or street levels;
(7) A statement of the estimated cost and method of financing redevelopment under the plan; provided, that where redevelopment activities are performed on the basis of annual increments, such statement to be sufficient shall set forth a schedule of the activities proposed to be undertaken during the incremental period, together with a statement of the estimated cost and method of financing such scheduled activities only;
(8) A statement of such continuing controls as may be deemed necessary to effectuate the purposes of this article;
(9) A statement of a feasible method proposed for the relocation of the families displaced.

(j) Subject to the proviso in subsection (c) of this section, upon approval by the governing body of the redevelopment plan, the commission is authorized to acquire property, to execute contracts for clearance and preparation of the land for resale, and to take other actions necessary to carry out the plan, in accordance with the provisions of this article.

(1965, c. 808; 1969, c. 254, s. 2.)

Editor's Note.—

The 1965 amendment added the proviso in subsection (c), and inserted "Subject to the proviso in subsection (c) of this section" at the beginning of subsection (j).

The 1969 amendment rewrote subdivision (7) of subsection (d).

As the rest of the section was not affected by the amendments, it is not set out.

The procedures required by this section are designed to guard against arbitrary action by either the governing body of the community or the redevelopment commission, and thus afford protection to persons owning property in the affected area. Unless these procedures are strictly followed, a redevelopment commission has no authority to exercise the power of eminent domain. Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968).

Stating Cause of Action for Condemnation.—A redevelopment commission, in order to state a cause of action for condemnation, must properly allege, inter alia, a redevelopment plan which complies with this section; the compliance with the procedures for approval of the redevelopment plan; and the approval of the plan by the governing body of the area in which the project is located. Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968).

A redevelopment commission must exercise the power of eminent domain pursuant to Chapter 160, Article 37 (now Chapter 160A, Article 11), and Chapter 40, Article 2, and in order to invoke this power the redevelopment commission must affirmatively allege compliance with the statutory requirements. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Plan Must Provide for Acquiring Redevelopment Area and Other Necessary Costs.—A redevelopment plan must, under subsection (d) (7) of this section, provide a method of financing of acquisition of the redevelopment area, and of all other costs necessary to prepare the area for redevelopment, which method must, of course, be legal and feasible. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Stated in Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

§ 160-464. Required procedures for contracts, purchases and sales; powers of commission in carrying out redevelopment project.—(a) A commission may privately contract for engineering, legal, surveying, professional or other similar services without advertisement or bid.

(b) In entering and carrying out any contract for construction, demolition, moving of structures, or repair work or the purchase of apparatus, supplies, materials, or equipment, a commission shall comply with the provisions of article 8 of chapter 143 of the General Statutes. In construing such provisions, the commission shall be considered to be the governing board of a "subdivision of the State," and a contract for demolition or moving of structures shall be treated in the same manner as a contract for construction or repair. Compliance with such provisions shall not be required, however, where the commission enters into contracts with the municipality which created it for the municipality to furnish any such services, work, apparatus, supplies, materials, or equipment; the making of these contracts without advertisement or bids is hereby specifically authorized. Advertisement or bids shall not be required for any contract for construction, demolition, moving of structures, or repair work, or for the purchase of apparatus, supplies, materials, or equipment, where such contract involves the expenditure of public money in an amount less than five hundred dollars ($500.00).

(c) A commission may sell, exchange, or otherwise transfer real property or any interest therein in a redevelopment project area to any redeveloper for residential, recreational, commercial, industrial or other uses or for public use in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this article; provided that such sale, exchange or other transfer, and any agreement relating thereto, may be made only after, or subject to, the approval of the redevelopment plan by the governing body of the municipality and after public notice and award as specified in subsection (d) below.

(d) Except as hereinafter specified, no sale of any property by the commission or agreement relating thereto shall be effected except after advertisement, bids and award as hereinafter set out. The commission shall, by public notice, by publication once a week for two consecutive weeks in a newspaper having general circulation in the municipality, invite proposals and shall make available all pertinent information to any persons interested in undertaking a purchase of property or the redevelopment of an area or any part thereof. The commission may require such bid bonds as it deems appropriate. After receipt of all bids, the sale shall be made to the highest responsible bidder. All bids may be rejected. All sales shall be subject to the approval of the governing body of the municipality. Nothing herein, however, shall prevent the sale at private sale without advertisement and bids to the municipality or other public body, or to a nonprofit association or corporation operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, of such property as is specified in subdivisions (1), (2), (3), or (4) of subsection (e) of this section, provided that such sale is in accordance with the provisions of said subdivisions. The commission may also sell personal property of a value of less than five hundred dollars ($500.00) at private sale without advertisement and bids.

(e) In carrying out a redevelopment project, the commission may:

(1) With or without consideration and at private sale convey to the municipality in which the project is located such real property as, in accordance with the redevelopment plan, is to be laid out into streets, alleys, and public ways;

(2) With or without consideration, convey at private sale, grant, or dedicate easements and rights-of-way for public utilities, sewers, streets and other similar facilities, in accordance with the redevelopment plan; and

(3) With or without consideration and at private sale convey to the municipality, county or other appropriate public body such real property as,

in accordance with the redevelopment plan, is to be used for parks, schools, public buildings, facilities or other public purposes.

(4) After a public hearing advertised in accordance with the provisions of § 160-463 (e), and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation organized and operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, such real property as, in accordance with the redevelopment plan, is to be used for the purposes of such associations or corporations. Such conveyance shall be for such consideration as may be agreed upon by the commission and the association or corporation, which shall not be less than the fair value of the property agreed upon by a committee of three professional real estate appraisers currently practicing in the State, which committee shall be appointed by the commission. All conveyances made under the authority of this subsection shall contain restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made.

(f) After receiving the required approval of a sale from the governing body of the municipality, the commission may execute any required contracts, deeds, and other instruments and take all steps necessary to effectuate any such contract or sale. Any contract of sale between a commission and a redeveloper may contain, without being limited to, any or all of the following provisions:

(1) Plans prepared by the redeveloper or otherwise and such other documents as may be required to show the type, material, structure and general character of the proposed redevelopment;

(2) A statement of the use intended for each part of the proposed redevelopment;

(3) A guaranty of completion of the proposed redevelopment within specified time limits;

(4) The amount, if known, of the consideration to be paid;

(5) Adequate safeguards for proper maintenance of all parts of the proposed redevelopment;

(6) Such other continuing controls as may be deemed necessary to effectuate the purposes of this article.

Any deed to a redeveloper in furtherance of a redevelopment contract shall be executed in the name of the commission, by its proper officers, and shall contain in addition to all other provisions, such conditions, restrictions and provisions as the commission may deem desirable to run with the land in order to effectuate the purposes of this article.

(g) The commission may temporarily rent or lease, operate and maintain real property in a redevelopment project area, pending the disposition of the property for redevelopment, for such uses and purposes as may be deemed desirable even though not in conformity with the redevelopment plan. (1951, c. 1095, s. 11; 1961, c. 837, s. 9; 1963, c. 1212, ss. 1, 2; 1965, c. 679, s. 2; 1967, c. 24, s. 18; c. 932, s. 1.)

Local Modification. — Durham, Lee, Mecklenburg, Robeson, Sampson and Wayne: 1971, c. 1060, s. 4; city of Charlotte and city of Durham: 1965, c. 1206; 1967, c. 815.

Editor's Note.—

The 1965 amendment rewrote this section.

Section 4 of the 1963 amendatory act was amended by Session Laws 1965, c. 539, which struck Mecklenburg from the list of excepted counties, and by Session Laws 1965, c. 818, which struck Forsyth from the list of excepted counties.

The word "effected" in the first sentence of subsection (d) is "affected" in the 1965 Session Laws.

The first 1967 amendment inserted the word "of" following "provisions" near the beginning of subdivision (4) of subsection (e) and corrected the reference near the beginning of the same subdivision. The second 1967 amendment made exactly the same changes as the first.

Chapter 24, Session Laws 1967, was originally effective Oct. 1, 1967, but was amended by c. 1078 so as to become effective July 1, 1967.

Sale of Condemned Property, etc.— The condemnation of blighted and slum areas within a municipality and the sale or exchange thereof to any redeveloper for residential, recreational, commercial, industrial or other uses or for public use in accordance with the redevelopment plan under safeguards to prevent such areas from reverting to slum areas, is in the interest of the public health, safety, morals and welfare, and therefore such condemnation is for a public purpose. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 160-465. Eminent domain.—Title to any property acquired by a commission through eminent domain shall be an absolute or fee simple title, unless a lesser title shall be designated in the eminent domain proceedings. The commission may exercise the right of eminent domain in accordance with the provisions of article 2 of chapter 40 of the General Statutes, with the following modifications:

(1) Upon the request in writing of any party to the proceeding submitted as part of the petition or of any answer thereto, the clerk of superior court shall order and preside over a formal hearing before the commissioners of appraisal at the time of their first meeting. At such hearing any party or his attorney shall be afforded an opportunity to present such competent evidence as he may choose relating to the value of the property in question.

(2) Upon payment into court of the amount specified by the commissioners, as provided in § 40-19, title to the property or other interest specified in the petition, together with the right to immediate possession thereof, shall vest in the commission, and the court or judge shall enter such orders in the cause as may be required to place the commission in possession. Such property or interest therein shall be deemed to be condemned and the right to just compensation therefor shall vest in the person or persons owning said property or any compensable interest therein. Payment into court of this amount shall not prejudice the right of the commission to take an appeal as to the amount of compensation payable for the property.

(3) Following payment into court of the amount specified by the commissioners, the court may upon application of the person or persons owning said property or having any compensable interest therein (and subject to the provisions of § 40-23) order that the money deposited or any part thereof be paid to the person or persons entitled thereto. The court shall have power to make such orders with respect to encumbrances, liens, rents, taxes, assessments, insurance and other charges, if any, as shall be just and equitable.

Acceptance or receipt of money thus disbursed shall not prejudice the right of any party to further proceedings in the cause to determine just compensation, and in the event that an increased amount is awarded, the amount thus received shall be applied as a credit against the total compensation awarded. In the event that a lesser amount is awarded, the appropriate amount shall be returned to the court for repayment to the redevelopment commission, and the court shall have power to make any necessary orders requiring such repayment.

(4) To the amount awarded as damages by the commissioners, jury, or judge, the judge shall as a part of just compensation add interest at the rate of six percent (6%) per annum on said amount from the date of taking to the date of judgment; but interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this section. For the purposes of this subdivision, the "date of taking" shall be the date on which the petition is filed.

(5) Pending disbursement of any funds thus paid into court, the clerk of superior court may in his discretion invest part or all of said funds as permitted by § 2-55. Any interest or dividends accruing from such deposit shall be applied to the sum finally ascertained to be due the owners of the property taken, and any excess resulting shall be returned to the redevelopment commission.

Subdivisions (2), (3), (4), (5) shall not be applicable in a suit against a corporation possessing the power of eminent domain under chapter 40 of the General Statutes in which such corporation, by its answer, raises the issue of the right of the commission to condemn the land or interest therein of such corporation.

Section 40-10 shall not apply to the commission. If any of the real property in the redevelopment area which is to be acquired has, prior to such acquisition, been devoted to another public use, it may, nevertheless, be acquired by condemnation; provided, that no real property belonging to any municipality or county or to the State may be acquired without its consent. The Department of Administration is hereby empowered to give such consent on behalf of the State; the governing board of any municipality or county is authorized to give such consent on behalf of the municipality or county. (1951, c. 1095, s. 12; 1965, c. 679, s. 3; c. 1132; 1967, c. 932, ss. 2, 3.)

Editor's Note. — The first 1965 amendment rewrote this section. The second 1965 amendment, effective retroactively to May 25, 1965, added the second paragraph of present subdivision (5).

The 1967 amendment inserted present subdivision (1) and renumbered the following subdivisions accordingly, substituted "(2), (3), (4), (5)" for "(1), (2), (3), (4)" in the second paragraph of present subdivision (5) and added the last sentence of present subdivision (2).

For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

Opinions of Attorney General. — Mr. William I. Cochran, Jr., Executive Director, Redevelopment Commission of the City of Washington, 8/4/69.

Strict Construction.—The exercise of the power of eminent domain is in derogation of common right, and all laws conferring such power must be strictly construed. Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968); Greensboro-High Point Airport Authority v. Irvin, 2 N.C. App. 341, 163 S.E.2d 118 (1968).

Statutes prescribing the procedure to condemn lands should be strictly construed. Redevelopment Comm'n v. Grimes, 8 N.C. App. 376, 174 S.E.2d 839 (1970).

Prerequisites to Exercise of Power of Eminent Domain.—The basic prerequisites to a redevelopment commission's gaining the authority to exercise the power of eminent domain are now, and at all times have been, the prerequisite procedures required by chapter 40, article 2, and chapter 160, article 37, with the modifications as now set out in this section. Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968).

In order for a redevelopment commission to establish a right to acquire property by condemnation, the petition must affirmatively show that the provisions of § 40-12 and this Article have been complied with. Redevelopment Comm'n v. Grimes, 8 N.C. App. 376, 174 S.E.2d 839 (1970).

Instantaneous Condemnation. — Under the provisions of subdivision (2) of this section, there is an instantaneous condemnation merely by the act of the commission paying into court the sum specified by the commissioners of appraisal. Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968).

Procedure to Acquire Property When Redevelopment Corporation and Landowner Unable to Agree. — When a redevelopment corporation, possessing the power of eminent domain under § 160-462, is unable to agree with the owner for the purchase of property required for its purposes, the procedure to acquire the property is by a special proceeding as provided in Chapter 40, Article 2, except as modified by the provision of this section. Redevelopment Comm'n v. Grimes, 8 N.C. App. 376, 174 S.E.2d 839 (1970).

Applied in Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Cited in Redevelopment Comm'n v. Smith, 272 N.C. 250, 158 S.E.2d 65 (1967).

§ 160-466. Issuance of bonds.

(c) Bonds of the commission shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

(1971, c. 87, s. 3.)

Editor's Note.—

The 1971 amendment deleted "not exceeding six per centum (6%) per annum" following "such rate or rates" in subsection (c).

Only the subsection affected by the amendment is set out.

Constitutionality.—

This section is not unconstitutional. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Subsection (d) of this section does nothing more than provide alternative methods for the sale of bonds issued by the commission, and further provides that no such bonds shall be sold at less than par and accrued interest. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

§ 160-470. Grant of funds by community.

This section is not unconstitutional. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Tax Can Only Be Levied for Expenses Necessary without Redevelopment Project.—Under this section, a municipality cannot legally levy a tax in connection with an urban redevelopment project for any purpose other than for streets, water, sewer and other such services as would constitute necessary expenses of the municipality, irrespective of whether or not a redevelopment project existed. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

And Bonds Cannot Be Issued for Unnecessary Expense without Election.—Pursuant to the following statement in this section, to wit: "To obtain funds for this purpose, the municipality may levy taxes and may in the manner prescribed by law issue and sell its bonds," a municipality could not issue and sell its bonds except in the manner prescribed by law, and the law requires that bonds issued to finance a project which is for a public purpose but not a necessary expense must be approved by the voters of the municipality if such bonds are obligations of the municipality. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

City May Appropriate Nontax Funds to Redevelopment Commission.—See opinion of Attorney General to Mr. Francis M. Coiner, Hendersonville City Attorney, 5/6/70.

§ 160-474.1. Certain actions and proceedings validated.—All proceedings, resolutions, ordinances, motions, notices, findings, determinations, and other actions of redevelopment commissions, incorporated cities and towns, governing bodies, and planning boards and commissions, had and taken prior to January 1, 1965, pursuant to or purporting to comply with the Urban Redevelopment Law (G.S. 160-454 to 160-474.1) and incident to the creation and organization of redevelopment commissions and appointment of members thereof, designation of redevelopment and project areas, findings and determinations respecting conditions in redevelopment and project areas, preparation, development, review, processing and approval of urban redevelopment projects and plans, including redevelopment plans, calling and holding of public hearings, and the time and manner of giving and publishing notices thereof, are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such actions are declared to be valid and lawfully authorized; provided, however, that no such actions shall be legalized, ratified, approved, validated or confirmed under this section if they appertain to any redevelopment or project area, the acquisition or taking of any property in any such area, any urban redevelopment project or any redevelopment plan respecting which any decree or judgment has been rendered by the Supreme Court of North Carolina prior to May 25, 1965. (1963, c. 194; 1965, c. 680.)

Editor's Note.—

The 1965 amendment rewrote this section.

§ **160-474.2. Contracts and agreements validated.**—All contracts or agreements of redevelopment commissions heretofore entered into with the federal government or its agencies, and with municipalities or others relating to financial assistance for redevelopment projects in which it was required that loans or advances shall bear an interest rate in excess of six per centum (6%) per annum, or in which a municipality or others had agreed to pay funds equal to the interest in excess of six per centum (6%) per annum are hereby validated, ratified, confirmed, approved and declared legal with respect to the payment of interest in excess of six per centum (6%), and all things done or performed in reference thereto. The redevelopment commissions are hereby authorized to assume the full obligation of the municipalities under the contracts or agreements with reference to interest in excess of six per centum (6%), and to reimburse any municipality which has made any interest payment under such contracts or agreements. (1971, c. 87, s. 4.)

SUBCHAPTER VIII. PARKING AUTHORITIES AND FACILITIES.

ARTICLE 38.

Parking Authorities.

§ **160-476. Definitions.**

(7) The term "parking project" shall mean any area or place operated or to to be operated by the authority for the parking or storing of motor and other vehicles, open to public use for a fee, and shall without limiting the foregoing, include all real and personal property, driveways roads, approaches, structures, garages, meters, mechanical equipment, and all appurtenances and facilities either on, above or under the ground which are used or usable in connection with such parking or storing of such vehicles, including on-street parking meters if so provided by the governing authority;

(1965, c. 998, s. 1.)

Editor's Note. — The 1965 amendment inserted "open to public use for a fee" near the beginning of subdivision (7) and added "including on-street parking meters if so provided by the governing authority" at the end of that subdivision.

As the rest of the section was not affected by the amendment, it is not set out.

§ **160-481. Purpose and powers of the authority.**—An authority incorporated under this Article shall constitute a public body and a body corporate and politic, exercising public powers as an agency or instrumentality of the city with which it is coterminous. The purpose of the authority shall be to relieve traffic congestion of the streets and public places in the city by means of parking facilities, and to that end to acquire, construct, improve, operate and maintain one or more parking projects in the city. To carry out said purpose, the authority shall have power:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold and dispose of personal property for its corporate purposes, including the power to purchase prospective or tentative awards in connection with the condemnation of real property;

(4) To acquire by purchase or condemnation, and use real property necessary or convenient. All real property acquired by the authority by condem-

nation shall be acquired in the manner provided by law for the condemnation of land by the city;

(5) To make bylaws for the management and regulation of its affairs, and subject to agreements with bondholders, for the regulation of parking projects;

(6) To make contracts and leases, and to execute all instruments necessary or convenient;

(7) To construct such buildings, structures and facilities as may be necessary or convenient;

(8) To construct, reconstruct, improve, maintain and operate parking projects.

(9) To accept grants, loans or contributions from the United States, the State of North Carolina, or any agency or instrumentality of either of them, or the city, and to expend the proceeds for any purposes of the authority,

(10) To fix and collect rentals, fees and other charges for the use of parking projects or any of them subject to and in accordance with such agreements with bondholders as may be made as hereinafter provided;

(11) To do all things necessary or convenient to carry out the purpose of the authority and the powers expressly given to it by this Article.

(12) To issue revenue bonds under the Local Government Revenue Bond Act. (1951, c. 779, s. 7; 1965, c. 998, s. 2; 1971, c. 780, s. 18.)

Editor's Note. — The 1965 amendment deleted "off-street" preceding "parking facilities" near the middle of the second sentence.

The 1971 amendment added subdivision (12).

See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 160-482. Conveyance of property by the city to the authority; acquisition of property by the city or by the authority.

(c) Contracts may be entered into between the city and the authority providing for the property to be conveyed by the city to the authority, the additional property to be acquired by the city and so conveyed, the streets, roads, parkways, avenues and highways to be closed by the city, and the amounts, terms and conditions of payment to be made by the authority. Such contracts may contain covenants by the city as to the road, streets, parkway, avenue and highway improvements to be made by the city, including provisions for the installation of parking meters in designated streets of the city and for the removal of such parking meters in the event that such parking meters are not found to be necessary or convenient. Any such contract may pledge all or any part of the revenues of on-street parking meters to the authority for a period of not to exceed the period during which bonds of the authority shall be outstanding; provided, that the total amount of such revenues which may be paid pursuant to such a pledge shall not exceed the total of the principal of and interest on such bonds which become due and payable during such period. Such contracts may also contain provisions limiting or prohibiting the construction and operation by the city or any agency thereof in designated areas of public parking facilities and parking meters whether or not a fee or charge is made therefor. Any such contracts between the city and the authority may be pledged by the authority to secure its bonds and may not be modified thereafter except as provided by the terms of the contracts or by the terms of the pledge. The city council may authorize such contracts on behalf of the city and no other authorization on the part of the city for such contracts shall be necessary.

(1965, c. 998, s. 3.)

Editor's Note. — The 1965 amendment substituted "on-street parking meters" for "such parking meters" in the third sentence of subsection (c).

As the rest of the section was not affected by the amendment, it is not set out.

§§ 160-485 to 160-489: Repealed by Session Laws 1971, c. 780, s. 19, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 160-493: Repealed by Session Laws 1971, c. 780, s. 19, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

ARTICLE 39.

Financing Parking Facilities.

§ 160-497: Repealed by Session Laws 1971, c. 780, s. 17, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 160-498. Definitions.

(4) The term "parking facilities" shall mean any area or place operated or to be operated by the authority for the parking or storing of motor and other vehicles open to public use for a fee, and shall without limiting the foregoing, include all real and personal property, driveways, roads, approaches, structures, garages, meters, mechanical equipment, and all appurtenances and facilities either on, above or under the ground which are used or usable in connection with such parking or storing of such vehicles, including on-street parking meters if so provided by the governing authority.

(1965, c. 998, s. 4.)

Editor's Note. — The 1965 amendment rewrote subdivision (4).

As the rest of the section was not affected by the amendment, it is not set out.

Repeal of Section.—Session Laws 1971, c. 780, s. 17, provides that this section shall be repealed July 1, 1973.

§§ 160-499 to 160-504: Repealed by Session Laws 1971, c. 780, s. 17, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 160-504.1. Issuance of bonds under Revenue Bond Act of 1938 with additional financing by special assessments.—Notwithstanding any other provision of law a municipal corporation for the purpose of financing and paying the costs of off-street parking facilities may issue its revenue bonds as provided by the Revenue Bond Act of 1938, the same being article 34 of chapter 160 of the General Statutes, and in addition to pledging the revenues of such off-street parking facilities for the payment of said revenue bonds may also pledge the proceeds of special assessments, as hereinafter provided, upon benefited property, except that all or any part of such proceeds may be applied to the payment of notes issued in anticipation of receipt of the proceeds of sale of such bonds, but in such event the amount of such bonds authorized shall be reduced by the amount of such payments. The special assessments herein referred to shall be assessed and collected in accordance with the procedure set forth in G.S. 160-504. (1965, c. 769, s. 1.)

Local Modification. — Craven: 1965, c. 769, s. 1½.

Repeal of Section.—Session Laws 1971, c. 780, s. 17, provides that this section shall be repealed July 1, 1973.

§§ 160-505 to 160-507: Repealed by Session Laws 1971, c. 780, s. 17, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

SUBCHAPTER IX. PHOTOGRAPHIC REPRODUCTION OF RECORDS.

ARTICLE 40.

Photographic Reproduction of Records.

§§ 160-508, 160-509: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

SUBCHAPTER X. ELECTRIC SERVICE IN MUNICIPAL AREAS.

ARTICLE 41.

Electric Service in Municipal Areas.

§§ 160-510 to 160-519: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

SUBCHAPTER XI. ASSESSMENTS AGAINST RAILROADS.

ARTICLE 42.

Assessments Against Railroads.

§§ 160-520, 160-521: Repealed by Session Laws 1971, c. 698, s. 2, effective January 1, 1972.

Cross Reference.—See Editor's note following the analysis to Chapter 160A.

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Editor's Note. — Session Laws 1971, c. 698, effective Jan. 1, 1972, repealed numerous sections in Chapter 160, Municipal Corporations, and enacted in their stead a new Chapter 160A, Cities and Towns. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in new Chapter 160A.

Session Laws 1971, c. 698, ss. 5-7, provide:

"Sec. 5. Nothing in this act is intended to affect in any way any rights or interests (whether public or private) (i) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act, or (ii) derived from or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of orders, ordinances, or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

"Sec. 6. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by (i) the repeal herein of any acts repealing such law, or (ii) any provision of this act that disclaims an intention to repeal or affect enumerated, designated, or described laws.

"Sec. 7. No action or proceeding of any nature (whether civil, criminal, judicial, administrative, or otherwise) pending at the effective date of this act shall be abated or otherwise affected by adoption of this act."

Session Laws 1971, c. 698, s. 8, contains a severability clause.

The cases and opinions of the Attorney General cited in the annotations to this Chapter were decided or issued under former similar statutory provisions prior to the enactment of this Chapter.

ARTICLE 1.

Definitions and Statutory Construction.

§ 160A-1. Application and meaning of terms.—Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this Chapter.

(1) "Charter" means the entire body of local acts currently in force applicable to a particular city, including articles of incorporation issued to a city by an administrative agency of the State, and any amendments thereto adopted pursuant to 1917 Public Laws, c. 136, Subchapter 16, Part VIII, sections 1 and 2, or Article 6, Part 4, of this Chapter.

(2) "City" means a municipal corporation organized under the laws of this State for the better government of the people within its jurisdiction and having the powers, duties, privileges, and immunities conferred by law on cities, towns, and villages. The term "city" does not include counties or municipal corporations organized for a special purpose. "City" is interchangeable with the terms "town" and "village," is used throughout this Chapter in preference to those terms, and shall mean any city as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.

(3) "Council" means the governing board of a city. "Council" is interchangeable with the terms "board of aldermen" and "board of commissioners," is used throughout this Chapter in preference to those terms, and shall mean any city council as defined in this subdivision

without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.

(4) "General law" means an act of the General Assembly applying to all units of local government, to all cities, or to all cities within a class defined by population or other criteria, including a law that meets the foregoing standards but contains a clause or section exempting from its effect one or more cities or all cities in one or more counties.

(5) "Local act" means an act of the General Assembly applying to one or more specific cities by name, or to all cities within one or more specifically named counties. "Local act" is interchangeable with the terms "special act," "public-local act," and "private act," is used throughout this Chapter in preference to those terms, and shall mean a local act as defined in this subdivision without regard to the terminology employed in charters, local acts, or other portions of the General Statutes.

(6) "Mayor" means the chief executive officer of a city by whatever title known.

(7) "Publish," "publication," and other forms of the verb "to publish" mean insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the city is located. (1971, c. 698, s. 1.)

§ **160A-2. Effect upon prior laws.**—Nothing in this Chapter shall repeal or amend any city charter in effect as of January 1, 1972, or any portion thereof, unless this Chapter or a subsequent enactment of the General Assembly shall clearly show a legislative intent to repeal or supersede all local acts. The provisions of this Chapter, insofar as they are the same in substance as laws in effect as of December 31, 1971, are intended to continue such laws in effect and not to be new enactments. The enactment of this Chapter shall not require the readoption of any city ordinance enacted pursuant to laws that were in effect before January 1, 1972, and are restated or revised herein. The provisions of this Chapter shall not affect any act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution begun or cause of action accrued as of January 1, 1972. (1971, c. 698, s. 1.)

§ **160A-3. General laws supplementary to charters.** — (a) When a procedure that purports to prescribe all acts necessary for the performance or execution of any power, duty, function, privilege, or immunity is provided by both a general law and a city charter, the two procedures may be used as alternatives, and a city may elect to follow either one.

(b) When a procedure for the performance or execution of any power, duty, function, privilege, or immunity is provided by both a general law and a city charter, but the charter procedure does not purport to contain all acts necessary to carry the power, duty, function, privilege, or immunity into execution, the charter procedure shall be supplemented by the general law procedure; but in case of conflict or inconsistency between the two procedures, the charter procedure shall control.

(c) When a power, duty, function, privilege, or immunity is conferred on cities by a general law, and a charter enacted earlier than the general law omits or expressly denies or limits the same power, duty, function, privilege or immunity, the general law shall supersede the charter. (1971, c. 698, s. 1.)

General Statutes Supplement Charter Provisions.—The provisions of a municipal charter are supplemented by the General Statutes of the State. Parsons v. Wright, 223 N.C. 520, 27 S.E.2d 534 (1943) (decided prior to the enactment of this section).

§ **160A-4. Broad construction.**—It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State. (1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided prior to the enactment of this section.

Municipal corporations have no inherent police powers and can exercise only those conferred, and such powers as are conferred are subject to strict construction. Kass v. Hedgepeth, 226 N.C. 405, 38 S.E.2d 164 (1946).

An incorporated city or town has no inherent police powers. State v. Furio, 267 N.C. 353, 148 S.E.2d 275 (1966).

Their Powers Must Be Expressly Granted or Implied from Express Grants.—A municipal corporation is a political subdivision of the State and can exercise only such powers as are granted in express words, or those necessary or fairly implied or incident to the powers expressly conferred, or those essential to the accomplishment of the declared objects and purposes of the corporation. Stephenson v. Raleigh, 232 N.C. 42, 59 S.E.2d 195 (1950).

A municipal corporation has only such powers as are granted to it by the General Assembly in its specific charter or by the general laws of the State applicable to all municipal corporations, and the powers granted in the charter will be construed together with those given under the General Statutes. Laughinghouse v. New Bern, 232 N.C. 596, 61 S.E.2d 802 (1950); Starbuck v. Havelock, 252 N.C. 176, 113 S.E.2d 278 (1960).

A municipal corporation is a creature of the General Assembly and has no inherent power but can exercise such powers as are expressly conferred by the General Assembly or such as are necessarily implied by those expessly given. State v. McGraw, 249 N.C. 205, 105 S.E.2d 659 (1958).

A municipal corporation has only such powers as are granted to it by the General Assembly in its specific charter or by the general laws of the State applicable to all municipal corporations, or such powers as are necessarily implied by those given. State v. Hod, 264 N.C. 149, 141 S.E.2d 241 (1965).

An incorporated city or town is an agency created by the State. It has no governmental power or authority except such as has been granted to it by the legislature, expressly or by necesssary implication from the powers expressly conferred. State v. Furio, 267 N.C. 353, 148 S.E.2d 275 (1966).

A city or town in this State has no inherent police power. It may exercise only such powers as are expressly conferred upon it by the General Assembly or as are necessarily implied from those expressly so conferred. Town of Conover v. Jolly, 277 N.C. 439, 177 S.E.2d 879 (1970).

A municipality is a creature of the State and has the powers prescribed by the statute, and those necessarily implied by law, and no other; therefore a city or town cannot make a rightful outlay of its tax revenues unless the outlay is explicitly or implicitly authorized by a statute conforming to the Constitution. Horner v. Chamber of Commerce, 231 N.C. 440, 57 S.E.2d 789 (1950); Wilson v. High Point, 238 N.C. 14, 76 S.E.2d 546 (1953).

The implied powers of a municipality are those which are necessarily or fairly implied in or incident to the powers expressly granted or essential to the accomplishment of the purposes of the corporation. Green v. Kitchin, 229 N.C. 450, 50 S.E. 545 (1948). For a leading article on this case, see 27 N.C.L. Rev. 500.

A municipal corporation is authorized by implication to do an act if the doing of such act is necessarily or fairly implied in or incident to the powers expressly granted, or is essential to the accomplishment of the declared objects and purposes of the corporation. Harrelson v. City of Fayetteville, 271 N.C. 87, 155 S.E.2d 749 (1967).

Doubt Concerning Powers Is Resolved against Municipality.—A municipality has no inherent police powers, but can exercise only those conferred by the State, and any reasonable doubt concerning such powers is resolved against it. State v. Dannenberg, 150 N.C. 799, 63 S.E. 946 (1911).

But It Has Discretion as to Accomplishment of Purposes.—A municipal corporation has only those powers expressly granted in its charter and by the general law, construing the acts together, and those powers reasonably implied in or incident to the granted powers which are necessary to effect the fair intent and purpose of its creation, and it may exercise a sound discretion as to the means by which the purposes of its creation may be accomplished. Riddle v. Ledbetter, 216 N.C. 491, 5 S.E.2d 542 (1939).

A municipal corporation may exercise all the powers within the fair intent and purpose of its creation which are reasonably necessary to give effect to the powers expressly granted, and in doing this it may exercise discretion as to the means to the end. Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

The courts will not inquire into the motives which prompt a municipality's legislative body to enact an ordinance which is valid on its face. Clark's Greenville, Inc. v. West, 268 N.C. 527, 151 S.E.2d 5 (1966).

A municipal corporation has no authority to waive its immunity from tort liability in performance of its governmental functions. Stephenson v. Raleigh, 232 N.C. 42, 59 S.E.2d 195 (1950).

In the absence of statutory authority, a municipality has no authority to contract away or waive its governmental immunity in respect to torts committed in the exercise of its governmental function. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970).

Ordinances Having Effect outside Territorial Limits of Corporation.—While the legislature may confer upon a municipal corporation the power to enact ordinances having effect in territory contiguous to the corporation, in the absence of the grant of such power a city or town may not, by its ordinance, prohibit acts outside its territorial limits or impose criminal liability therefor. State v. Furio, 267 N.C. 353, 148 S.E.2d 275 (1966).

§ 160A-5. Statutory references deemed amended to conform to Chapter.—Whenever a reference is made in another portion of the General Statutes or any local act to a portion of Chapter 160 of the General Statutes that is repealed or superseded by this Chapter, the reference shall be deemed amended to refer to that portion of this Chapter which most clearly corresponds to the repealed or superseded portion of Chapter 160. (1971, c. 698, s. 1.)

Article 1A.

Municipal Board of Control.

§ 160A-6. Municipal Board of Control; membership; per diem.—The Municipal Board of Control shall consist of five members. The secretary of the Local Government Commission, the chairman of the Senate Committee on Local Government, and the chairman of the House of Representatives Committee on Local Government are members of the Board ex officio. The secretary of the Local Government Commission is ex officio chairman of the Municipal Board of Control. The Governor shall appoint as members one elected municipal official and one elected county official to serve at his pleasure. Membership on the Board is declared to be an office that may be held concurrently with any other elective or appointive office, as authorized by Article VI, § 9, of the Constitution. The Board's administrative location within the executive departments shall be determined by the Governor.

Members of the Board are entitled to the per diem compensation and allowances prescribed by G.S. 138-5. All expenses of the Board shall be paid from the Contingency and Emergency Fund.

The Board may adopt rules and regulations to carry out its powers and duties. (1971, c. 896, s. 9; c. 921, s. 1.)

Editor's Note. — Sections 160A-6 to 160A-10 were originally codified as §§ 160-195 to 160-198.5. They were transferred to their present position by Session Laws 1971, c. 896, s. 9, effective Jan. 1, 1972.

§ 160A-7. Petition; number of signatures; contents.—Any 25 or more qualified voters residing within an area proposed for incorporation as a city may petition the Municipal Board of Control for incorporation of the area. The petition shall contain

(1) A description of the proposed corporate boundaries,
(2) A proposed name for the city,
(3) Recommendations as to the composition and mode of election of the

city governing body within the optional forms set out in G.S. 160-291 [160A-101], and

(4) The names of three persons to act as the interim governing body until the regular governing body is elected and qualified.

The Board may prescribe the form of the petition and methods for determining whether it is sufficient, or that incorporation of the area will not adversely affect the normal growth and development of the existing city or town. (1971, c. 896, s. 9; c. 921, s. 2.)

§ **160A-8. Petition to be filed and published.**—Before an incorporation petition is presented to the Board, the persons proposing to present it shall cause a copy thereof to be delivered to the board of county commissioners of the county in which the city is located and to the governing boards of all other cities and towns in the county or located within three miles of the area but in another county, and shall also publish in a newspaper having a general circulation in the county a notice signed by at least five of them stating

(1) The corporate limits of the proposed city,

(2) The proposed name of the city, and

(3) A statement that an incorporation petition will be presented to the Municipal Board of Control.

The notice must be published once a week for three successive weeks before the petition is presented. (1971, c. 896, s. 9; c. 921, s. 3.)

§ **160A-9. Fees; notice of hearing.**—Upon presenting an incorporation petition to the Board, the petitioners shall pay to the Board a fee of two hundred dollars ($200.00). The Board shall then set a time and place for a public hearing on the petition. Notice of the hearing shall be published once a week for three successive weeks in a newspaper having a general circulation in the county, and shall be mailed to the board of county commissioners and to the governing boards of all other cities and towns in the county or located within three miles of the area but in another county. (1971, c. 896, s. 9; c. 921, s. 4.)

§ **160A-9.1. Factors to be considered by Board.**—In determining whether a proposed city shall be incorporated, the Board may consider:

(1) Whether incorporation is necessary or expedient and in the public interest.

(2) The permanent and seasonal population of the area.

(3) The appraised value of property subject to taxation in the area, the county's assessment ratio, and the ability of the proposed city to provide municipal services to its citizens.

(4) The probable effect of the incorporation on existing cities and towns.

(5) The extent to which the area is already developed for urban purposes. The Board may inquire into and give consideration to any other matters that it believes to have a bearing on the issues before it. (1971, c. 896, s. 9; c. 921, s. 5.)

§ **160A-9.2. Necessary findings by the Board.**—The Board shall enter an order incorporating the area if, upon the information and evidence it receives, it finds:

(1) That incorporation of the area is necessary or expedient and in the public interest.

(2) That the area has a permanent resident population of at least 500 or a seasonal population of at least 1,000.

(3) That the appraised value of property subject to taxation by the city will be sufficient to enable it to provide appropriate municipal services to its citizens.

(4) If any portion of the corporate limits is less than three miles from the

corporate limits of another city or town qualified under G.S. 136-41.2 to receive gasoline tax allocations, that the governing board of the existing city or town has expressed no objection to the incorporation.

(5) That at least sixty percent (60%) of the area within the proposed city is already developed for residential, commercial, industrial, institutional, or governmental uses, and that the remaining area is not separated from the developed area by natural barriers to urban growth.

In making the findings required by this section, the Board may call upon the division of community planning of the Department of Local Affairs for technical assistance. (1971, c. 896, s. 9; c. 921, s. 6.)

§ **160A-9.3. Board orders effective date; vote of residents optional.**—The Board may make its order of incorporation effective on such date as it may prescribe, or it may make the order effective only upon approval by the qualified voters residing in the area. The Board shall make its order effective only upon voter approval upon receiving a petition to this effect signed by a number of qualified voters resident in the area equal to at least twenty-five percent (25%) of those who would be eligible to vote in its municipal elections, as certified by the appropriate county board of elections. An incorporation referendum held under this section shall be determined by a majority of those who participate therein. The Board shall determine the sufficiency of the petition and its determination and the board of elections' certification of the number of qualified voters in the area shall be conclusive. (1971, c. 896, s. 9; c. 921, s. 7.)

§ **160A-9.4. Board to prepare charters.**—Upon approving an order of incorporation, the Board shall prepare and issue a charter for the city. The charter shall specify

(1) The corporate limits,
(2) The name of the city,
(3) The composition and mode of election of the governing body within the option forms set out in G.S. 160-291 [160A-101],
(4) The names of three qualified voters of the area who shall serve as the city governing body until their successors are elected and qualified in accordance with the charter, and
(5) The date of the first regular municipal election, which may be held in conjunction with the incorporation referendum if one is held.

In issuing the charter, the Board shall consider but shall not be bound by recommendations set out in the incorporation petition and testimony received at the public hearing. The charter shall be filed in the office of the Secretary of State on or before its effective date. (1971, c. 896, s. 9; c. 921, s. 8.)

§ **160A-10. Board-incorporated cities to have full powers.** — Cities incorporated pursuant to this Article have all of the powers conferred by law on cities and towns generally. (1971, c. 896, s. 9; c. 921, s. 9.)

ARTICLE 2.

General Corporate Powers.

§ **160A-11. Corporate powers.**—The inhabitants of each city heretofore or hereafter incorporated by act of the General Assembly or by the former Municipal Board of Control shall be and remain a municipal corporation by the name specified in the city charter. Under that name they shall be vested with all of the property and rights in property belonging to the corporation; shall have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, bequeathed, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; may have a common seal and alter and renew the same at will; and shall have and may exercise in conformity with the city charter and the general laws of this State all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P. L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1.)

Cross Reference.—See note to § 160A-4.

Editor's Note.—The cases cited in the following note were decided under former similar provisions.

Ordinance within Power Granted Is Presumed Reasonable.—When an ordinance is within the grant of power to the municipality, the presumption is that it is reasonable. Gene's, Inc. v. Charlotte, 259 N.C. 118, 129 S.E.2d 889 (1963).

Control of Municipal Territory and Affairs.—"When a municipal corporation is established it takes control of the territory and affairs over which it is given authority to the exclusion of other governmental agencies. The object of incorporating a town or city is to invest the inhabitants of the municipality with the government of all matters that are of special municipal concern, and certainly the streets are as much of a special and local concern as anything connected with a town or city can well be. It ought, therefore, to be presumed that they pass under the exclusive control of the municipality so soon as it comes into existence under the law. Gunter v. Sanford, 186 N.C. 452, 120 S.E. 41 (1923)." Parsons v. Wright, 223 N.C. 520, 27 S.E.2d 534 (1943).

Purchase at Tax Sale.—The title of the purchaser at a tax foreclosure sale may not be challenged by the listed owner upon the purchaser's motion for a writ of assistance, and such purchaser may be a municipality where it does not appear of record that the purchase of the land was ultra vires, a municipality having the power to purchase land for certain purposes. Wake County v. Johnson, 206 N.C. 478, 174 S.E. 303 (1934).

A town must be sued in its corporate name and not in the name of its officers. Young v. Barden, 90 N.C. 424 (1886).

How Served with Summons.—A summons against a city may be served on the mayor and on the secretary of the board of aldermen. Loughran v. Hickory, 129 N.C. 281, 40 S.E. 46 (1901).

Venue in County Where Municipality Located.—Cities and towns must be sued in the county in which they are located, and if suit is brought in another county, they have the right to have it removed. Jones v. Statesville, 97 N.C. 86, 2 S.E. 346 (1887). See § 1-77 and note.

Action in Name of All Citizens against City.—In an action against a municipal corporation to enjoin the collection of an illegal tax, it is not error to allow all citizens other than the original plaintiff to be made parties plaintiff. Cobb v. Elizabeth City, 75 N.C. 1 (1876).

§ **160A-12. Exercise of corporate power.** — All powers, functions, rights, privileges, and immunities of the corporation shall be exercised by the city council and carried into execution as provided by the charter or the general law. A power, function, right, privilege, or immunity that is conferred or imposed by charter or general law without directions or restrictions as to how it is to be exercised or performed shall be carried into execution as provided by ordinance or resolution of the city council. (Code, s. 703; Rev., s. 2917; C. S., s. 2624; 1971, c. 698, s. 1.)

Opinions of Attorney General. — Mr. Richard A. Williams, Maiden Town Attorney, 7/29/69 (issued under former § 160-3).

Torts; Authority to Act Based on Unauthorized Representations by Individual Board Members.—See opinion of Attorney General to Mr. John W. Twisdale, Clayton Town Attorney, 1/12/70 (issued under former § 160-3).

§§ **160A-13 to 160A-15:** Reserved for future codification purposes.

ARTICLE 3.

Contracts.

§ **160A-16. Contracts to be in writing; exception.**—All contracts made by or on behalf of a city shall be in writing. A contract made in violation of this section shall be void and unenforceable unless it is expressly ratified by the council. (1917, c. 136, sub-ch. 13, s. 8; C. S., s. 2831; 1971, c. 698, s. 1.)

§ **160A-17. Continuing contracts.** — A city is authorized to enter into continuing contracts, some portion or all of which are to be performed in ensuing fiscal years. Sufficient funds shall be appropriated to meet any amount to be paid under the contract in the fiscal year in which it is made, and in each ensuing fiscal year, the council shall appropriate sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into. (1971, c. 698, s. 1.)

§ **160A-17.1. Grants from other governments.**—The governing body of any municipality is hereby authorized to make contracts for and to accept grants in aid and loans from the federal and State governments and their agencies for constructing, expanding, maintaining, and operating any project or facility, or performing any function, which such municipality may be authorized by general or local law to provide or perform.

In order to exercise the authority granted by this section, the governing body of any municipality may:

(1) Enter into and carry out contracts with the State or federal government or any agency or institution thereof under which such government, agency, or institution grants financial or other assistance to the municipality;

(2) Accept such assistance or funds as may be granted or loaned by the State or federal government with or without such a contract;

(3) Agree to and comply with any lawful and reasonable conditions which are imposed upon such grants or loans;

(4) Make expenditures from any funds so granted.

The word "municipality" shall for purposes of this section include counties and incorporated cities and towns. (1971, c. 896, s. 10; c. 937, ss. 1, 1.5.)

Editor's Note. — This section was originally codified as subdivision (50) of § 160-200. It was transferred to its present position by Session Laws 1971, c. 896, s. 10, effective Jan. 1, 1972.

§ **160A-18. Certain deeds validated.**—(a) All deeds made, executed, and delivered by any city before July 1, 1970, for a good and valuable consideration are hereby in all respects validated, ratified, and confirmed notwithstanding any lack of authority to make the deed or any irregularities in the procedures by which conveyance of the land or premises described therein was authorized by the city council.

(b) All conveyances and sales of any interest in real property by private sale, including conveyances in fee and releases of vested or contingent future interests, made by the governing body of any city, school district, or school administrative unit before July 1, 1970, are hereby validated, ratified, and confirmed notwithstanding the fact that such conveyances or releases were made by private sale and not after notice and public outcry.

(c) Nothing in this section shall affect any action or proceeding begun before January 1, 1972. (Ex. Sess. 1924, c. 95; 1951, c. 44; 1959, c. 487; 1971, c. 698, s. 1.)

§§ **160A-19, 160A-20:** Reserved for future codification purposes.

ARTICLE 4.

Corporate Limits.

Part 1. General Provisions.

§ **160A-21. Existing boundaries.**—The boundaries of each city shall be those specified in its charter with any alterations that are made from time to time in the manner provided by law or by local act of the General Assembly. (1971, c. 698, s. 1.)

§ **160A-22. Map of corporate limits.**—The current city boundaries shall at all times be drawn on a map, set out in a written description, or shown by a combination of these techniques. This delineation shall be retained permanently in the office of the city clerk. Alterations in these established boundaries shall be indicated by appropriate entries upon or additions to the map or description made by or under the direction of the officer charged with that duty by the city charter or by the council. Copies of the map or description reproduced by any method of reproduction that gives legible and permanent copies, when certified by the city clerk, shall be admissible in evidence in all courts and shall have the same force and effect as would the original map or description. The council may provide for the redrawing of any map of the city boundaries. A redrawn map shall supersede for all purposes the earlier map or maps that it is designated to replace. (1971, c. 698, s. 1.)

§ **160A-23. District map; reapportionment.**—(a) If the city is divided into electoral districts for the purpose of electing the members of the council, the map or description required by G.S. 160A-22 shall also show the boundaries of the several districts.

(b) The council shall have authority to revise electoral district boundaries from time to time. If district boundaries are set out in the city charter and the charter does not provide a method for revising them, the council may revise them only for the purpose of (i) accounting for territory annexed to or excluded from the city, and (ii) correcting population imbalances among the districts shown by a new federal census or caused by exclusions or annexations. When district boundaries have been established in conformity with the federal Constitution, the council shall not be required to revise them again until a new federal census of population is taken or territory is annexed to or excluded from the city, whichever event first occurs. In establishing district boundaries, the council may use data derived from the most recent federal census and shall not be required to use any other population estimates. (1971, c. 698, s. 1.)

§§ **160A-24 to 160A-59:** Reserved for future codification purposes.

ARTICLE 5.

Form of Government.

Part 1. General Provisions.

§ **160A-60. Qualifications for appointive office.**—Residence within a city shall not be a qualification for or prerequisite to appointment to any city office not filled by election of the people, unless the charter or an ordinance provides otherwise. City councils shall have authority to fix qualifications for appointive offices, but shall have no authority to waive qualifications for appointive offices fixed by charters or general laws. (1870-1, c. 24, s. 3; Code, s. 3796; Rev., s. 2941; C. S., s. 2646; 1951, c. 24; 1969, c. 134, s. 1; 1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former similar provisions.

Section Does Not Deal with Character of Office. — Former § 160-25 dealt merely with the qualification of the appointee and not with the character of the office. State v. Hord, 264 N.C. 149, 141 S.E.2d 241 (1965).

Vacating Office for Preexisting Impediment. — While there can be no serious doubt of the right of a corporate body to vacate the seat of a corporate officer for adequate causes arising subsequent to taking his seat, there has been no precedent for depriving a member of his place by the action of a municipal body of which he is a member for any preexisting impediment affecting his capacity to hold the office. Ellison v. Raleigh, 89 N.C. 125 (1883).

City Charter Prescribing Qualifications of Firemen Not Repealed.—Former §§ 160-25 and 160-115.1 did not repeal the provisions of a city's charter prescribing the qualifications of its firemen. Bland v. City of Wilmington, 278 N.C. 657, 180 S.E.2d 813 (1971).

Right to Declaratory Judgment Construing Section.—When the rights of parties are affected by provisions similar to this section and other statutes, to the end that they may be relieved "from uncertainty and insecurity," such parties are entitled to have the applicable statutes construed and their rights declared, and a real controversy exists between the parties. Bland v. City of Wilmington, 278 N.C. 657, 180 S.E.2d 813 (1971).

§ **160A-61. Oath of office.**—Every person elected by the people or appointed to any city office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in Article VI, § 7 of the Constitution. Oaths of office shall be administered by some person authorized by law to administer oaths, and shall be filed with the city clerk. (R. C., c. 111, s. 12; Code, s. 3799; Rev., s. 2920; C. S., s. 2628; 1971, c. 698, s. 1.)

§ **160A-62. Officers to hold over until successors qualified.**—All city officers, whether elected or appointed, shall continue to hold office until their successors are chosen and qualified. This section shall not apply when an office or position has been abolished, when an appointed officer or employee has been discharged, or when an elected officer has been removed from office. (R. C., c. 111, s. 8; Code, s. 3792; Rev., s. 2943; C. S., s. 2648; 1971, c. 698, s. 1.)

§ **160A-63. Vacancies.**—All vacancies that occur in any elective office of a city shall be filled by appointment of the city council for the remainder of the unexpired term. If the number of vacancies on the council is such that a quorum of the council cannot be obtained, the mayor shall appoint enough members to make up a quorum, and the council shall then proceed to fill the remaining vacancies. If the number of vacancies on the council is such that a quorum of the council cannot be obtained and the office of mayor is vacant, the Governor may fill the vacancies upon the request of any remaining member of the council, or upon the petition of any five registered voters of the city. Vacancies in appointive offices shall be filled by the same authority that makes the initial appointment. This section shall not apply to vacancies in cities that have not held a city election, levied any taxes, or engaged in any municipal functions for a period of five years or more. (R. C., c. 111, ss. 9, 10; Code, ss. 3793, 3794; Rev., ss. 2921, 2931; C. S., ss. 2629, 2631; 1971, c. 698, s. 1.)

§ **160A-64. Compensation of mayor and council.**—(a) The council may fix its own compensation and the compensation of the mayor and any other elected officers of the city, in such sums as may be just and reasonable. Any increase in the compensation of the council shall not take effect until after the next succeeding regular municipal election. Adjustments in the compensation of the mayor and any other elected officers may be made effective at such time as the council may direct, but the salary of an elected officer shall not be reduced during the then current term of office unless he shall agree thereto. Elected officers shall be entitled to reimbursement for actual expenses incurred in the course of performing their official duties at rates not in excess of those allowed to other city officers and employees.

(b) All charter provisions in effect as of January 1, 1972, fixing the compensation or allowances of any city officer or employee are repealed, but persons holding office or employment on January 1, 1972, shall continue to receive the compensation and allowances then prescribed by law until the council provides otherwise in accordance with this section or G.S. 160A-162. (1969, c. 181, s. 1; 1971, c. 698, s. 1.)

§ 160A-65. Fidelity bonds.—(a) Every officer, employee, or agent of a city who handles or has in his custody more than $100 of city funds at any time shall, before assuming his duties, give bond with good sureties payable to the city in an amount to be determined by the council, that he will faithfully perform the duties of his office and render a true accounting for all city funds that may come into his custody or control. Unless otherwise required by law, the council may waive the faithful performance bond, but may not waive the true accounting bond. The city may pay the premiums on all bonds. The bond, when approved, shall be deposited with the city clerk.

(b) Cities may adopt a system of blanket faithful performance or true accounting bonding as an alternative to individual bonds. When such a system is adopted, statutory requirements of individual bonds, except for accountants, treasurers, and tax collectors by whatever title known, shall not apply to any officer or employee covered by the blanket bond. (1917, c. 136, sub-ch. 13, s. 15; C. S., s. 2828; 1945, c. 619; 1967, c. 800, s. 1; 1971, c. 698, s. 1.)

Part 2. Mayor and Council.

§ 160A-66. Composition of council.—Unless otherwise provided by its charter, each city shall be governed by a mayor and a council of three members, who shall be elected from the city at large for terms of two years. (1971, c. 698, s. 1.)

§ 160A-67. General powers of mayor and council.—Except as otherwise provided by law, the government and general management of the city shall be vested in the council. The powers and duties of the mayor shall be such as are conferred upon him by law, together with such other powers and duties as may be conferred upon him by the council pursuant to law. The mayor shall be recognized as the official head of the city for the purpose of service of civil process, and for all ceremonial purposes. (1971, c. 698, s. 1.)

Part 3. Organization and Procedures of the Council.

§ 160A-68. Organizational meeting of council. — The organizational meeting of the council shall be the first regular meeting after the regular city election. At the organizational meeting, the newly elected mayor and councilmen shall qualify by taking the oath of office prescribed in Article VI, § 7 of the Constitution. The organization of the council shall take place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, but at least a quorum of the members must be present. (1971, c. 698, s. 1.)

§ 160A-69. Mayor to preside over council.—The mayor shall preside at all council meetings, but shall have the right to vote only when there are equal numbers of votes in the affirmative and in the negative. (1971, c. 698, s. 1.)

Mayor's Power to Vote.—Ordinarily, the office of mayor is of an executive or administrative character, and he is not permitted to vote except in cases where it is especially provided. Markham v. Simpson, 175 N.C. 135, 95 S.E. 106 (1918) (decided prior to enactment of this section).

§ 160A-70. Mayor pro tempore; disability of mayor.—At the organizational meeting, the council shall elect from among its members a mayor pro tempore to serve at the pleasure of the council. A councilman serving as mayor pro tempore shall be entitled to vote on all matters and shall be considered a councilman for all purposes, including the determination of whether a quorum is present. During the absence of the mayor, the council may confer upon the mayor pro tempore any of the powers and duties of the mayor. If the mayor should become physically or mentally incapable of performing the duties of his office, the council may by unanimous vote declare that he is incapacitated and confer any of his powers and duties on the mayor pro tempore. Upon the mayor's declaration that he is no longer incapacitated, and with the concurrence of a majority of the council, the mayor shall resume the exercise of his powers and duties. (1971, c. 698, s. 1.)

§ **160A-71. Regular and special meetings; procedure.**—(a) The council shall fix the time and place for its regular meetings.

(b) The mayor, the mayor pro tempore, or any two members of the council may at any time call a special council meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. The notice shall be delivered to the mayor and each councilman or left at his usual dwelling place at least six hours before the meeting. Special meetings may be held at any time when the mayor and all members of the council are present and consent thereto, or when those not present have signed a written waiver of notice. Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or have signed a written waiver of notice.

(c) The council may adopt its own rules of procedure, not inconsistent with the city charter, general law, or generally accepted principles of parliamentary procedure. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2822; 1971, c. 698, s. 1.)

§ **160A-72. Minutes to be kept; ayes and noes.** — Full and accurate minutes of the council proceedings shall be kept, and shall be open to the inspection of the public. Upon request of any member of the council, the ayes and noes upon any question shall be taken and entered in the minutes. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2822; 1971, c. 698, s. 1.)

The requirement that a full and accurate journal of the proceedings be kept is merely directory and not a condition precedent to the validity of a contract regularly entered into by the municipality. Graham v. Karpark Corp., 194 F.2d 616 (1952) (decided under former § 160-269).

§ **160A-73**: Repealed by Session Laws 1971, c. 896, s. 16, effective January 1, 1972.

Editor's Note.—The repealed section had been enacted by Session Laws 1971, c. 698, s. 1, and required public legislative sessions of the council and that the results of each vote be recorded in the minutes.

§ **160A-74. Quorum.**—A majority of the membership of the council shall constitute a quorum. The number required for a quorum shall not be affected by vacancies. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2821; 1971, c. 698, s. 1.)

§ **160A-75. Voting.**—No member shall be excused from voting except upon matters involving the consideration of his own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue (including the mayor's vote in case of an equal division) shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the members of the council (not including the mayor unless he has the right to vote on all questions before the council). (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2821; 1971, c. 698, s. 1.)

§ **160A-76. Franchises; technical ordinances.**—(a) No ordinance making a grant, renewal, extension, or amendment of any franchise shall be finally adopted until it has been passed at two regular meetings of the council, and no such grant, renewal, extension, or amendment shall be made otherwise than by ordinance.

(b) Any published technical code or any standards or regulations promulgated by any public agency may be adopted in an ordinance by reference. Subject to G.S. 143-138(e), a technical code or set of standards or regulations adopted by reference in a city ordinance shall have the force of law within the city. Official copies of all technical codes, standards, and regulations adopted by reference shall be maintained for public inspection in the office of the city clerk. (1917, c. 136, subch. 13, C. S., s. 2823; 1963, c. 790; 1971, c. 698, s. 1.)

§ **160A-77. Code of ordinances.**—(a) Not later than July 1, 1974, each city having a population of 5,000 or more shall adopt and issue a code of its ordinances. The code may be reproduced by any method that gives legible and permanent copies, and may be issued as a securely bound book or books with periodic separately bound supplements, or as a loose-leaf book maintained by replacement pages. Supplements or replacement pages should be adopted and issued annually at least, unless no additions to or modifications of the code have been adopted by the council during the year. The code may consist of two separate parts, the "General Ordinances" and the "Technical Ordinances." The technical ordinances may be published as separate books or pamphlets, and may include ordinances regarding the construction of buildings, the installation of plumbing and electric wiring, the installation of cooling and heating equipment, the use of public utilities, buildings, or facilities operated by the city, the zoning ordinance, the subdivision control ordinance, the privilege license tax ordinance, and other similar technical ordinances designated as such by the council. The council may omit from the code designated classes of ordinances of limited interest or transitory nature, but the code should clearly describe the classes of ordinances omitted therefrom.

(b) The council may provide that one or more of the following classes of ordinances shall be codified by appropriate entries upon official map books to be retained permanently in the office of the city clerk or some other city office generally accessible to the public:

(1) Establishing or amending the boundaries of zoning districts;
(2) Designating the location of traffic control devices;
(3) Designating areas or zones where regulations are applied to parking, loading, bus stops, or taxicab stands;
(4) Establishing speed limits;
(5) Designating the location of through streets, stop intersections, yield-right-of-way intersections, waiting lanes, one-way streets, or truck traffic routes; and
(6) Establishing regulations upon vehicle turns at designated locations.

(c) It is the intent of this section to make uniform the law concerning the adoption of city codes. To this end, all charter provisions in conflict with this section in effect as of January 1, 1972, are expressly repealed, except to the extent that the charter makes adoption of a code mandatory, and no local act taking effect on or after January 1, 1972, shall be construed to repeal or amend this section in whole or in part unless it shall expressly so provide by specific reference. (1971, c. 698, s. 1.)

§ **160A-78. Ordinance book.**—Effective January 1, 1972, each city shall file a true copy of each ordinance adopted on or after January 1, 1972, in an ordinance book separate and apart from the council's minute book. The ordinance book shall be appropriately indexed and maintained for public inspection in the office of the city clerk. Effective July 1, 1973, true copies of all ordinances that were adopted before January 1, 1972, and are still in effect shall be filed and indexed in the ordinance book. If the city has adopted and issued a code of ordinances in compliance with G.S. 160A-77, its ordinances shall be filed and indexed in the ordinance book until they are codified. (1971, c. 698, s. 1.)

§ **160A-79. Pleading and proving city ordinances.**—(a) In all civil and criminal cases it shall be sufficient to plead any city ordinance by its caption, or by its caption and the number assigned to it in a code adopted and issued in compliance with G.S. 160A-77.

(b) Any of the following shall be admitted in evidence in all actions or proceedings before courts or administrative bodies and shall have the same force and effect as would an original ordinance:

(1) A city code adopted and issued in compliance with G.S. 160A-77, containing a statement that the code is published by order of the council pursuant to G.S. 160A-77.

(2) Copies of any part of an official map book maintained in accordance with G.S. 160A-77 and certified under seal by the city clerk as having been adopted by the council and maintained in accordance with its directions (the clerk's certificate need not be authenticated).

(3) A copy of an ordinance as set out in the minutes, code, or ordinance book of the council, certified under seal by the city clerk as a true copy (the clerk's certificate need not be authenticated).

(c) The burden of pleading and proving the existence of any modification or repeal of an ordinance, map, or code, a copy of which has been duly pleaded or admitted in evidence in accordance with this section, shall be upon the party asserting such modification or repeal. It shall be presumed that any portion of a city code that is admitted in evidence in accordance with this section has been codified in compliance with G.S. 160A-77, and the burden of pleading and proving to the contrary shall be upon the party seeking to obtain an advantage thereby.

(d) From and after the respective effective dates of G.S. 160A-77 and G.S. 160A-78, no city ordinance shall be enforced or admitted into evidence in any court unless it has been codified or filed and indexed in accordance with G.S 160A-77 or G.S. 160A-78. It shall be presumed that an ordinance which has been properly pleaded and proved in accordance with this section has been codified or filed and indexed in accordance with G.S. 160A-77 or G.S. 160A-78, and the burden of pleading and proving to the contrary shall be upon the party seeking to obtain an advantage thereby.

(e) It is the intent of this section to make uniform the law concerning the pleading and proving of city ordinances. To this end, all charter provisions in conflict with this section in effect as of January 1, 1972, are expressly repealed, and no local act taking effect on or after January 1, 1972, shall be construed to repeal or amend this section in whole or in part unless it shall expressly so provide by specific reference. (1917, c. 136, sub-ch. 13, s. 14; C. S., s. 2825; 1959, c. 631; 1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former § 160-272 or provisions similar thereto.

Warrant or Indictment Must Set Out or Plead Ordinance. — Criminal prosecution for violation of a municipal ordinance cannot be maintained if the warrant or indictment on which it is based does not set out the ordinance or plead it in a manner permitted by statute. State v. Wiggs, 269 N.C. 507, 153 S.E.2d 84 (1967).

Judicial Notice Not Taken of Ordinance.—Courts of general jurisdiction and the Supreme Court will not take judicial notice of a municipal ordinance. High Point Surplus Co. v. Pleasants, 263 N.C. 587, 139 S.E.2d 892 (1965).

Excerpt of Ordinance in Indictment May Be Construed with Entire Ordinance.—The courts, when called upon to construe an excerpt from an ordinance set out in a bill of indictment, may interpret the excerpt correctly by construing it with the rest of the ordinance, certainly when the entire ordinance is before the court by stipulation of the parties. High Point Surplus Co. v. Pleasants, 263 N.C. 587, 139 S.E.2d 892 (1965).

Nonsuit for Variance Allowed.—Where a warrant charging disorderly conduct does not contain any allegations, specific or general, to the effect that the prosecution was for the violation of a municipal ordinance, but the municipal ordinance is introduced in evidence and the trial proceeds as though defendant had been charged with the violation of the ordinance, nonsuit for variance must be allowed. State v. Wiggs, 269 N.C. 507, 153 S.E.2d 84 (1967).

Ordinance Properly Proved.—The introduction of an ordinance of a town regulating the speed of trains backing upon the track, and properly proven, will not be regarded as error on appeal, when it is proved that upon the evidence in the case the jury has found, upon a trial without legal error, the negligence of the defendant's employees proximately caused the personal injury for which damages were sought in the action. Parker v. Seaboard, etc., Railway, 181 N.C. 95, 106 S.E. 755 (1921).

§ 160A-80. Power of investigation; subpoena power. — (a) The council shall have power to investigate the affairs of the city, and for that purpose may subpoena witnesses, administer oaths, and compel the production of evidence.

(b) If a person fails or refuses to obey a subpoena issued pursuant to this section, the council may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the council pursuant to a subpoena issued in exercise of the power conferred by this section may be used against him on the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. If any person, while under oath at an investigation by the council, willfully swears falsely, he is guilty of a misdemeanor.

(c) This section shall not apply to cities having a population of less than 5,000. (1971, c. 698, s. 1.)

§ 160A-81. Conduct of public hearings.—Public hearings may be held at any place within the city or within the county in which the city is located. The council may adopt reasonable rules governing the conduct of public hearings, including but not limited to rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing.

The council may continue any public hearing without further advertisement. If a public hearing is set for a given date and a quorum of the council is not then present, the hearing shall be continued until the next regular council meeting without further advertisement. (1971, c. 698, s. 1.)

§ 160A-82. Applicability of Part. — Nothing in this Part, except G.S. 160A-77, G.S. 160A-78 and G.S. 160A-79, shall be construed to repeal any portion of any city charter inconsistent with anything contained herein. (1971, c. 698, s. 1.)

§§ 160A-83 to 160A-100: Reserved for future codification purposes.

Part 4. Modification of Form of Government.

§ 160A-101. Optional forms.—Any city may change its name or alter its form of government by adopting any one or combination of the options prescribed by this section:

(1) Name of the corporation:

The name of the corporation may be changed to any name not deceptively similar to that of another city in this State.

(2) Style of the corporation:

The city may be styled a city, town, or village.

(3) Style of the governing board:
The governing board may be styled the board of commissioners, the board of aldermen, or the council.

(4) Terms of office of members of the council:
Members of the council shall serve terms of office of not less than two nor more than four years. All of the terms need not be of the same length, and all of the terms need not expire in the same year.

(5) Number of members of the council:
The council shall consist of any number of members not less than three nor more than 12.

(6) Mode of election of the council:
a. All candidates shall be nominated and elected by all the qualified voters of the city.
b. The city shall be divided into electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; the qualified voters of each district shall nominate and elect candidates who reside in the district for seats apportioned to that district; and all the qualified voters of the city shall nominate and elect candidates apportioned to the city at large, if any.
c. The city shall be divided into electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large; and candidates shall reside in and represent the districts according to the apportionment plan adopted, but all candidates shall be nominated and elected by all the qualified voters of the city.

If either of options b or c is adopted, the council shall divide the city into the requisite number of electoral districts according to the apportionment plan adopted, and shall cause a map of the districts so laid out to be drawn up and filed as provided by G.S. 160A-22 and 160A-23. No more than one half of the council may be apportioned to the city at large. An initiative petition may specify the number of electoral districts to be laid out, but the drawing of district boundaries and apportionment of members to the districts shall be done in all cases by the council.

(7) Elections:
a. Partisan.—Municipal primaries and elections shall be conducted on a partisan basis as provided in G.S. 163-291.
b. Nonpartisan Plurality.—Municipal elections shall be conducted as provided in G.S. 163-292.
c. Nonpartisan Election and Runoff Election.—Municipal elections and runoff elections shall be conducted as provided in G.S. 163-293.
d. Nonpartisan Primary and Election.—Municipal primaries and elections shall be conducted as provided in G.S. 163-294.

(8) Selection of mayor:
a. The mayor shall be elected by all the qualified voters of the city for a term of not less than two years nor more than four years.
b. The mayor shall be selected by the council from among its membership to serve at its pleasure.

(9) Form of government:
a. The city shall operate under the mayor-council form of government in accordance with Part 3 of Article 7 of this Chapter.
b. The city shall operate under the council-manager form of govern-

ment in accordance with Part 2 of Article 7 of this Chapter and any charter provisions not in conflict therewith. (1969, c. 629, s. 2; 1971, c. 698, s. 1; c. 1076, s. 1.)

Editor's Note.—The 1971 amendment rewrote subdivision (7).

§ **160A-102. Amendment by ordinance.**—By following the procedure set out in this section, the council may amend the city charter by ordinance to implement any of the optional forms set out in G.S. 160A-101. The council shall first adopt a resolution of intent to consider an ordinance amending the charter. The resolution of intent shall describe the proposed charter amendments briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. At the same time that a resolution of intent is adopted, the council shall also call a public hearing on the proposed charter amendments, the date of the hearing to be not more than 45 days after adoption of the resolution. A notice of the hearing shall be published at least once not less than 10 days prior to the date fixed for the public hearing, and shall contain a summary of the proposed amendments. Following the public hearing, but not earlier than the next regular meeting of the council and not later than 60 days from the date of the hearing, the council may adopt an ordinance amending the charter to implement the amendments proposed in the resolution of intent.

The council may, but shall not be required to unless a referendum petition is received pursuant to G.S. 160A-103, make any ordinance adopted pursuant to this section effective only if approved by a vote of the people, and may by resolution adopted at the same time call a special election for the purpose of submitting the ordinance to a vote. The date fixed for the special election shall be not more than 90 days after adoption of the ordinance.

Within 10 days after an ordinance is adopted under this section, the council shall publish a notice stating that an ordinance amending the charter has been adopted and summarizing its contents and effect. If the ordinance is made effective subject to a vote of the people, the council shall publish a notice of the election not less than 20 days before the last day on which voters may register to vote in the special election, and need not publish a separate notice of adoption of the ordinance.

The council may not commence proceedings under this section between the time of the filing of a valid initiative petition pursuant to G.S. 160A-128 [160A-104] and the date of any election called pursuant to such petition. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ **160A-103. Referendum on charter amendments by ordinance.**—An ordinance adopted under G.S. 160A-102 that is not made effective upon approval by a vote of the people shall be subject to a referendum petition. Upon receipt of a referendum petition bearing the signatures of a number of qualified voters of the city equal to at least 10 percent of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less, the council shall submit an ordinance adopted under G.S. 160A-102 to a vote of the people. The date of the special election shall be fixed at not more than 120 nor fewer than 60 days after receipt of the petition. A referendum petition shall be addressed to the council and shall identify the ordinance to be submitted to a vote. A referendum petition must be filed with the city clerk not later than 30 days after publication of the ordinance following its adoption. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ **160A-104. Initiative petitions for charter amendments.** — The people may initiate a referendum on proposed charter amendments. An initiative petition shall bear the signatures of a number of qualified voters of the city equal to at least ten percent (10%) of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less. The petition shall set forth the proposed amendments by describing them briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. The petition may not propose changes in the alternative, or more than one integrated set of charter amendments. Upon receipt of a valid initiative petition, the council shall call a special election on the question of adopting the charter amendments proposed therein. The date of the special election shall be fixed at not more than 120 nor fewer than 60 days after receipt of the petition. If a majority of the votes cast in the special election shall be in favor of the proposed changes, the council shall adopt an ordinance amending the charter to put them into effect. Such an ordinance shall not be subject to a referendum petition. No initiative petition may be filed (i) between the time the council initiates proceedings under G.S. 160A-102 by publishing a notice of hearing on proposed charter amendments and the time proceedings under that section have been carried to a conclusion either through adoption or rejection of a proposed ordinance or lapse of time, nor (ii) within one year and six months following the effective date of an ordinance amending the city charter pursuant to this Article, nor (iii) within one year and six months following the date of any election on charter amendments that were defeated by the voters.

The restrictions imposed by this section on filing initiative petitions shall apply only to petitions concerning the same subject matter. For example, pendency of council action on amendments concerning the method of electing the council shall not preclude an initiative petition on adoption of the council-manager form of government.

Nothing in this section shall be construed to prohibit the submission of more than one proposition for charter amendments on the same ballot so long as no proposition offers a different plan under the same option as another proposition on the same ballot. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-105. Submission of propositions to voters; form of ballot.—A proposition to approve an ordinance or petition shall be printed on the ballot in substantially the following form:

"Shall the ordinance (describe the effect of the ordinance) be approved?

( ) YES
( ) NO"

The ballot shall be separate from all other ballots used at the election.

If a majority of the votes cast on a proposition shall be in the affirmative, the plan contained therein shall be put into effect as provided in this Article. If a majority of the votes cast shall be against the proposition, the ordinance or petition proposing the amendments shall be void and of no effect. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-106. Amendment of charter provisions dependent on form of government.—The authority conferred by this Article to amend charter provisions within the options set out in G.S. 160A-101 also includes authority to amend other charter provisions dependent on the form of city government to conform them to the form of government amendments. By way of illustration and not limitation, if a charter providing for a five-member council is amended to increase the size of the council to seven members, a charter provision defining a quorum of the council as three members shall be amended to define a quorum as four members. (1971, c. 698, s. 1.)

§ 160A-107. Plan to continue for two years. — Charter amendments adopted as provided in this Article shall continue in force for at least two years after the beginning of the term of office of the officers elected thereunder. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ **160A-108. Municipal officers to carry out plan.**—It shall be the duty of the mayor, the council, the city clerk, and other city officials in office, and all boards of election and election officials, when any plan of government is adopted as provided by this Article or is proposed for adoption, to comply with all requirements of this Article, to the end that all things may be done which are necessary for the nomination and election of the officers first to be elected under the new plan so adopted. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ **160A-109. Effective date.**—The council may submit new charter amendments proposed under this Article at any regular or special municipal election, or at a special election called for that sole purpose. Any amendment affecting the election of city officers shall be finally adopted and approved at least 90 days before the first election for mayor or council members held thereunder. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ **160A-110. Charters to remain in force.**—The charter of any city that adopts a new form of government as provided in this Article shall continue in full force and effect notwithstanding adoption of a new form of government, except to the extent modified by an ordinance adopted under the authority conferred and pursuant to the procedures prescribed by this Article. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§§ **160A-111 to 160A-115**: Reserved for future codification purposes.

ARTICLE 6.

Elections.

§§ **160A-116 to 160A-127**: Repealed by Session Laws 1971, c. 1076 s. 2.

Cross Reference.—As to municipal elections, see §§ 163-279 to 163-304.

Editor's Note. — The repealed sections had been enacted by Session Laws 1971, c. 698, s. 1.

§§ **160A-128 to 160A-145**: Reserved for future codification purposes.

ARTICLE 7.

Administrative Offices.

Part 1. Organization and Reorganization of City Government.

§ **160A-146. Council to organize city government.**—The council may create, change, abolish, and consolidate offices, positions, departments, boards, commissions, and agencies of the city government and generally organize and reorganize the city government in order to promote orderly and efficient administration of city affairs, subject to the following limitations:

(1) The council may not abolish any office, position, department, board, commission, or agency established and required by law;

(2) The council may not combine offices or confer certain duties on the same officer when such action is specifically forbidden by law;

(3) The council may not discontinue or assign elsewhere any functions or duties assigned by law to a particular office, position, department, or agency. (1971, c. 698, s. 1.)

Part 2. Administration of Council-Manager Cities.

§ **160A-147. Appointment of city manager.**—In cities whose charters provide for the council manager form of government, the council shall appoint a city manager to serve at its pleasure. The manager shall be appointed solely on the basis of his executive and administrative qualifications. He need not be a resident of the city or State at the time of his appointment. The office of city manager is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to Article VI, § 9, of the Constitution. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ **160A-148. Powers and duties of manager.**—The manager shall be the chief administrator of the city. He shall be responsible to the council for administering all municipal affairs placed in his charge by them, and shall have the following powers and duties:

(1) He shall appoint and suspend or remove all city employees, except the city attorney, in accordance with such general personnel rules, regulations, policies, or ordinances as the council may adopt.
(2) He shall direct and supervise the administration of all departments, offices, and agencies of the city, subject to the general direction and control of the council, except as otherwise provided by law.
(3) He shall attend all meetings of the council and recommend any measures that he deems expedient.
(4) He shall see that all laws of the State, the city charter, and the ordinances, resolutions, and regulations of the council are faithfully executed within the city.
(5) He shall prepare and submit the annual budget and capital program to the council.
(6) He shall annually submit to the council and make available to the public a complete report on the finances and administrative activities of the city as of the end of the fiscal year.
(7) He shall make any other reports that the council may require concerning the operations of city departments, offices, and agencies subject to his direction and control.
(8) He shall perform any other duties that may be required or authorized by the council. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

Liability of City for Malicious Prosecution by Manager.—Action of the city manager in instigating the arrest and prosecution of a municipal employee for embezzlement is done in the performance of a governmental function imposed upon the city manager by this section, and therefore the city may not be held liable in tort by such employee in an action for malicious prosecution. McDonald v. Carper, 252 N.C. 29, 112 S.E.2d 741 (1960) (decided under former § 160-349).

§ **160A-149. Acting city manager.**—By letter filed with the city clerk, the manager may designate, subject to the approval of the council, a qualified person to exercise the powers and perform the duties of manager during his temporary absence or disability. During this absence or disability, the council may revoke that designation at any time and appoint another to serve until the manager returns or his disability ceases. (1971, c. 698, s. 1.)

§ **160A-150. Interim city manager.**—When the position of city manager is vacant, the council shall designate a qualified person to exercise the powers and perform the duties of manager until the vacancy is filled. (1971, c. 698, s. 1.)

§ **160A-151. Mayor and councilmen ineligible to serve or act as manager.**—Neither the mayor nor any member of the council shall be eligible for appointment as manager or acting or interim manager. (1971, c. 698, s. 1.)

§ **160A-152. Applicability of Part.**—This Part shall apply only to those cities having the council-manager form of government. If the powers and duties of a city manager set out in any city charter shall differ materially from those set out in G.S. 160A-148, the council may by ordinance confer or impose on the manager any of the powers or duties set out in G.S. 160A-148 but not contained in the charter. (1971, c. 698, s. 1.)

§§ **160A-153, 160A-154:** Reserved for future codification purposes.

Part 3. Administration of Mayor-Council Cities.

§ **160A-155. Council to provide for administration in mayor-council cities.**—The council shall appoint, suspend, and remove the heads of all city departments. The head of each department shall appoint, suspend, and remove all city employees assigned to his department, and shall see that all laws of the State, the city charter, and the ordinances, resolutions, and regulations of the council concerning his department are faithfully executed within the city. Otherwise, the administration of the city shall be performed as provided by law or direction of the council. (1971, c. 698, s. 1.)

§ **160A-156. Acting department heads.**—By letter filed with the city clerk, the head of any department may designate, subject to the approval of the council, a qualified person to exercise the powers and perform the duties of head of that department during his temporary absence or disability. During his absence or disability, the council may revoke that designation at any time and appoint another officer to serve until the department head returns or his disability ceases. (1971, c. 698, s. 1.)

§ **160A-157. Interim department heads.**—When the position of head of any department is vacant, the council may designate a qualified person to exercise the powers and perform the duties of head of the department until the vacancy is filled. (1971, c. 698, s. 1.)

§ **160A-158. Mayor and councilmen ineligible to serve or act as heads of departments.**—Neither the mayor nor any member of the council shall be eligible for appointment as head of any city department or as acting or interim head of a department. This section shall not apply to cities having a population of less than 5,000. (1971, c. 698, s. 1.)

§ **160A-159. Applicability of Part.**—This Part shall apply only to those cities having the mayor-council form of government. (1971, c. 698, s. 1.)

§§ **160A-160, 160A-161:** Reserved for future codification purposes.

Part 4. Personnel.

§ **160A-162. Compensation.**—(a) The council shall fix or approve the schedule of pay, expense allowances, and other compensation of all city employees, and may adopt position classification plans. In cities with the council-manager form of government, the manager shall be responsible for preparing position classification and pay plans for submission to the council and, after any such plans have been adopted by the council, shall administer them. In cities with the mayor-council form of government, the council shall appoint a personnel officer (or confer the duties of personnel officer on some city administrative officer); the personnel officer shall then be responsible for administering the pay plan and any position classification plan in accordance with general policies and directives adopted by the council.

(b) The council may purchase life insurance and health insurance for the benefit of all or any class of city employees as a part of their compensation, and may provide other fringe benefits for city employees. (1923, c. 20; 1949, c. 103; 1969, c. 845; 1971, c. 698, s. 1.)

Compensation When No Salary Specified.—Where a municipal corporation engages a commissioner of its sinking fund under the provisions of its charter, by which the incumbent was employed for a term of years continuously, his employment is that of a public officer, which precludes compensation based upon a quantum meruit, and he may not recover for his services in the absence of express statutory provision. Borden v. Goldsboro, 173 N.C. 661, 92 S.E. 694 (1917) (decided under former similar provisions).

§ **160A-163. Retirement benefits.**—(a) The council may provide for enrolling city employees in the Local Governmental Employees' Retirement System, the Law Enforcement Officers' Benefit and Relief Fund, the Firemen's Pension Fund, or a retirement plan certified to be actuarially sound by a qualified actuary as defined in subsection (d) of this section, and may make payments into any such retirement system or plan on behalf of its employees. The city may also supplement from local funds benefits provided by the Local Governmental Employees' Retirement System, the Law Enforcement Officers' Benefit and Relief Fund, or the Firemen's Pension Fund.

(b) The council may create and administer a special fund for the relief of members of the police and fire departments who have been retired for age, or for disability or injury incurred in the line of duty, but any such funds established on or after January 1, 1972, shall be subject to the provisions of subsection (c) of this section. The council may receive donations and bequests in aid of any such fund, shall provide for its permanence and increase, and shall prescribe and regulate the conditions under which benefits may be paid.

(c) No city shall make payments into any retirement system or plan established or authorized by local act of the General Assembly unless the plan is certified to be actuarially sound by a qualified actuary as defined in subsection (d) of this section.

(d) A qualified actuary means an individual certified as qualified by the Commissioner of Insurance, or any member of the American Academy of Actuaries. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1965, c. 931; 1971, c. 698, s. 1.)

§ **160A-164. Personnel rules.**—The council may adopt or provide for rules and regulations or ordinances concerning but not limited to annual leave, sick leave, special leave with full pay or with partial pay supplementing workmen's compensation payments for employees injured in accidents arising out of and in the course of employment, hours of employment, holidays, working conditions, service award and incentive award programs, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent, and honest career employees. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1965, c. 931; 1971, c. 698, s. 1.)

§ **160A-165. Personnel board.**—The council may establish a personnel board with authority to administer tests designed to determine the merit and fitness of candidates for appointment or promotion, to conduct hearings upon the appeal of employees who have been suspended, demoted, or discharged, and hear employee grievances. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1965, c. 931; 1971, c. 698, s. 1.)

§ **160A-166. Participation in Social Security Act.**—The council may take any action necessary to allow city employees to participate fully in benefits provided by the federal Social Security Act. (1949, c. 103; 1969, c. 845; 1971, c. 698, s. 1.)

§ **160A-167. Defense of employees and officers.**—Upon request made by or in behalf of any employee or officer, or former employee or officer, any city may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as an employee or officer of the city. The defense may be provided by the city by its own counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense. Providing for a defense pursuant to this section is hereby declared to be for a public purpose, and the expenditure of funds therefor is hereby declared to be a necessary expense. Nothing in this section shall be deemed to require any city to provide for the defense of any action or proceeding of any nature. (1967, c. 1093; 1971, c. 698, s. 1.)

§§ **160A-168 to 160A-170:** Reserved for future codification purposes.

Part 5. City Clerk.

§ **160A-171. City clerk; duties.**—There shall be a city clerk who shall give notice of meetings of the council, keep a journal of the proceedings of the council, be the custodian of all city records, and shall perform any other duties that may be required by law or the council. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2826; 1941, c. 103; 1949, c. 14; 1971, c. 698, s. 1.)

§ **160A-172. Deputy clerk.**—The council may provide for a deputy city clerk who shall have full authority to exercise and perform any of the powers and duties of the city clerk that may be specified by the council. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2826; 1941, c. 103; 1949, c. 14; 1971, c. 698, s. 1.)

Part 6. City Attorney.

§ **160A-173. City attorney; appointment and duties.**—The council shall appoint a city attorney to serve at its pleasure and to be its legal adviser. (1971, c. 698, s. 1.)

ARTICLE 8.

Delegation and Exercise of the General Police Power.

§ **160A-174. General ordinance-making power.**—(a) A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.

(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;
(2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;
(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;
(4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;
(5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation.
(6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition. (1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former similar provisions.

In General. — "In construing this and similar legislation elsewhere, the courts have very generally held that the established municipal authorities may enact such ordinances as are promotive of the peace and good order of the town, the limitation being that the regulations may not be unreasonable or unduly discriminative nor manifestly oppressive and in 'derogation of common right.'" State v. Burbage, 172 N.C. 876, 89 S.E. 795 (1916).

It is not necessary now to aver an authority to pass the ordinance conferred by a general and public law, as it was when that authority was derived under a special act of incorporation. State v. Merritt, 83 N.C. 677 (1880).

Construction against City.—A doubt as to whether an ordinance is invalid, as conflicting with individual rights, should be resolved against the city. Slaughter v. O'Berry, 126 N.C. 181, 35 S.E. 241, 48 L.R.A. 442 (1900).

The courts will not inquire into the motives which prompt a municipality's legislative body to enact an ordinance which is valid on its face. Clark's Greenville, Inc. v. West, 268 N.C. 527, 151 S.E.2d 5 (1966).

Courts Slow to Question Discretion of Ordinance.—By this section discretionary power is vested in the city authorities, and the courts will be slow to interfere when the ordinance is not contrary to the laws of the State and no fraud, dishonesty, or oppression is charged. State v. Austin, 114 N.C. 855, 19 S.E. 919 (1894). Or unless their action is so clearly unreasonable as to amount to oppression and manifest abuse of their discretion, and then the power of the court will be exercised with great caution and only in a clear case. Jones v. North Wilkesboro, 150 N.C. 646, 64 S.E. 866 (1909).

Challenging Constitutionality of Criminal Statute or Ordinance in Action to Enjoin Enforcement.—Notwithstanding the general rule that the constitutionality of a statute or ordinance purporting to create a criminal offense may not be challenged in an action to enjoin its enforcement, a well-established exception permits such action when injunctive relief is essential to the protection of property rights and the rights of persons against injuries otherwise irremediable. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 7 N.C. App. 289, 172 S.E.2d 276 (1970).

Ordinances Operative until Repealed.—Succeeding boards of commissioners are deemed to act subject to the provisions of ordinances passed by their predecessors in authority, until they see fit to repeal them. Hutchins v. Durham, 118 N.C. 457, 24 S.E. 723 (1896).

General Laws Prevail over Ordinances.—"The true principle is that municipal bylaws and ordinances must be in harmony with the general laws of the State, and whenever they come in conflict with the general laws the bylaws and ordinances must give way." Washington v. Hammond, 76 N.C. 33 (1877); State v. Stevens, 114 N.C. 873, 19 S.E. 861 (1894).

Classification of Occupations.—The general question of the right of classification was very fully considered in State v. Davis, 157 N.C. 648, 74 S.E. 130 (1911), and Smith v. Wilkins, 164 N.C. 135, 80 S.E. 168 (1913), and the doctrine was approved that the General Assembly or municipal corporation has the power to classify the different occupations, provided the classification is not unreasonable and oppressive, and that usually the extent to which the power will be exercised is for the General Assembly or the governing body of the municipality. State v. Davis, 171 N.C. 809, 89 S.E. 40 (1916).

So long as the classification made by the ordinance bears some reasonable relationship to the public welfare which the ordinance seeks to promote, the ordinance will not be rendered unconstitutional merely because persons in one class derive some incidental competitive advantage over those in another. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 7 N.C. App. 289, 172 S.E.2d 276 (1970).

Sunday Ordinances.—The power to enact Sunday ordinances has been delegated to the municipalities of the State. State v. Trantham, 230 N.C. 641, 55 S.E.2d 198 (1949).

The General Assembly has delegated to municipalities the power and authority to enact ordinances requiring the observance of Sunday. These are general statutes, conferring authority upon all cities and towns within the State, without exception. High Point Surplus Co. v. Pleasants, 264 N.C. 650, 142 S.E.2d 697 (1965).

"It is against the public policy of the State that one should pursue his ordinary business calling on Sunday, and it is very generally understood not only that ordinary business pursuits may be regulated, but altogether prohibited on Sunday." State v. Medlin, 170 N.C. 682, 86 S.E. 597 (1915); State v. Burbage, 172 N.C. 876, 89 S.E. 795 (1916).

The enactment of Sunday regulations comes within the police power, and the General Assembly or a municipal governing board exercising delegated power may enact such regulations provided the classifications of those affected are based upon reasonable distinctions, affect all persons similarly situated, and have some reasonable relation to the public peace, welfare, and safety. Clark's Charlotte, Inc. v. Hunter, 261 N.C. 222, 134 S.E.2d 364 (1964).

When enacted by cities and towns under

general laws, Sunday-observance ordinances which are reasonable and do not discriminate within a class of competitors similarly situated have been upheld as a valid exercise of delegated police power. State v. Smith, 265 N.C. 173, 143 S.E.2d 293 (1965).

Sunday observance ordinances adopted in the exercise of the police power conferred by the General Assembly upon cities and towns have been upheld by the Supreme Court. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

Ordinances prohibiting certain activities on Sunday, enacted pursuant to this section, are not in contravention of N.C. Const., Art. I, § 13. State v. McGee, 237 N.C. 633, 75 S.E.2d 783 (1953).

The provisions of N.C. Const., Art. I, §§ 13 and 19, do not deprive the legislature of authority to prohibit by a statute, otherwise valid, the carrying on of and engaging in, on Sunday, any and all labor and the operation of industrial and commercial pursuits, except for works of necessity and acts which, themselves, are in exercise of the constitutional right to worship. The legislature may delegate this power to municipalities. Such legislation is within the police power of the State and, nothing else appearing, is not a violation of the First or Fourteenth Amendment to the Constitution of the United States. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 276 N.C. 661, 174 S.E.2d 542 (1970).

A city ordinance regulating Sunday sales will be upheld as a valid exercise of the State's police power, delegated to municipalities by provisions similar to this section, if the classifications created by the ordinance are founded upon reasonable distinctions, affect equally all persons within a particular class, and bear a reasonable relationship to the public health and welfare sought to be promoted. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 7 N.C. App. 289, 172 S.E.2d 276 (1970).

The objective of a municipal ordinance being the establishment of Sunday as a day of general rest and relaxation, the difference in treatment by the ordinance of two types of business must be supported by a reasonable basis for the conclusion that one, substantially more than the other, will interfere with such use and enjoyment of the day. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 276 N.C. 661, 174 S.E.2d 542 (1970).

The legislative body has a wide discretion in determining which activities do and which activities do not interfere with the observance of Sunday as a day of general rest and relaxation sufficiently to justify the prohibition of those activities on that day. The burden rests upon the person complaining to establish the absence of a reasonable basis for such determination. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 276 N.C. 661, 174 S.E.2d 542 (1970).

Regulating the sale of merchandise, drinks, etc., on Sunday is a valid exercise of the police powers of an incorporated city or town. And while the service of meals within the municipality at restaurants, etc., is a necessity, permitting the sale of coffee, tea, etc., the sale of coca-cola as a part of the meals is not included, and a sale thereof as a part of the meal may be prohibited by ordinance. State v. Weddington, 188 N.C. 643, 125 S.E. 257 (1924).

Sunday-observance ordinances, when they proscribe buying and selling, whether it be tangible merchandise or a ticket to an amusement or a sporting event, regulate trade under the broad definition of trade which has been adopted by the Supreme Court. Since, however, these city ordinances are passed under general laws, with reference to them there is no conflict between the exercise of the police power and N.C. Const., Art. II, § 24. State v. Smith, 265 N.C. 173, 143 S.E.2d 293 (1965).

An ordinance of a town may, under the provisions of this section prohibit the opening of all places of business on Sunday, except drugstores; and it is not an unreasonable regulation, under the police power of the town, inasmuch as drugstores are open all day Sunday, for the governing authorities to further provide that they may sell articles of common use which are quasi necessities to many, such as mineral waters, soft drinks, cigars and tobacco, only, between certain hours of that day. State v. Medlin, 170 N.C. 682, 86 S.E. 597 (1915).

An ordinance of a town, authorized by statute, imposing a fine of $25 upon drugstores for selling cigars, etc., on Sunday, and a fine of $5 for the same offense upon restaurants, cafés, and lunch stands declaring the same to be a misdemeanor, relates to distinct and easily severable occupations, and in the absence of any finding that those engaged in them come in competition with each other, the ordinance will not be declared unconstitutional and invalid upon the ground that it is discretionary against the owners of drugstores. State v. Davis, 171 N.C. 809, 89 S.E. 40 (1916).

A municipal ordinance prohibiting generally the operation of all businesses within a municipality on Sunday, but excepting certain businesses, including hotels, drugstores, magazine stands, etc., does not result in unlawful discrimination in regard to general department stores, even though such stores have departments selling the same types of goods as stores within the classifications excepted from the ordinance, since the classification of general department stores as distinguished from drugstores, bakeries, etc., is based upon a reasonable distinction and the ordinance operates equally upon all within the several classifications. Clark's Charlotte, Inc. v. Hunter, 261 N.C. 222, 134 S.E.2d 364 (1964).

A Sunday observance ordinance which classifies "sporting goods and toys" as prohibited items and live bait as permitted items cannot be considered unreasonable, arbitrary or discriminatory. S.S. Kresge Co. v. Tomlinson, 275 N.C. 1, 165 S.E.2d 236 (1969).

A Sunday observance ordinance which prevents the offer for sale or sale of mobile homes on Sunday but does not prevent such offer for sale or sale of conventional homes does not create classifications bearing no reasonable relationship to the purpose of the ordinance of providing for the due observance of Sunday as a day of rest. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 7 N.C. App. 289, 172 S.E.2d 276 (1970).

A Sunday observance ordinance which prevents the offer for sale or sale of mobile homes on Sunday but does not prevent such offer for sale or sale of conventional homes does not create classifications not founded on reasonable distinctions and affects equally all members of the same class, since a conventional home is real property and a mobile home while in the hands of a dealer is personal property, and the distinctions between real and personal property provide a legitimate basis for such classification. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 7 N.C. App. 289, 172 S.E.2d 276 (1970).

A municipal ordinance which prohibits the sale on Sunday of mobile homes but which does not prohibit the sale on Sunday of conventional homes is valid, since a classification based on the differences between the two types of selling—presence or absence of traffic, congestion, and noise—bears a reasonable relation to the purpose of the ordinance in establishing Sunday as a day of rest and relaxation. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 276 N.C. 661, 174 S.E.2d 542 (1970).

Ordinance regulating sale of merchandise on Sunday held valid. Clark's Greenville, Inc. v. West, 268 N.C. 527, 151 S.E.2d 5 (1966).

Power to Close Business at Certain Hours. — The right of a city to restrict hours of business is restricted to cases when it is for the protection and benefit of the public. It has no power to require a merchant to close his store at an early hour because other merchants so desire to close all stores at a regular early hour. State v. Ray, 131 N.C. 814, 42 S.E. 960 (1902).

Sitting in Place of Business after Closing Time.—A city has power to restrict the use of property insofar as it may injure others, but it has no power to provide against a person sitting in his place of business after a time prescribed for closing it. State v. Thomas, 118 N.C. 1221, 24 S.E. 535 (1896).

Regulation of Gasoline Stations.—That the regulation of gasoline filling or gasoline storage stations comes within the police power of the State is freely conceded; and that such power is specifically conferred upon the plaintiff is likewise conceded. Wake Forest v. Medlin, 199 N.C. 83, 154 S.E. 29 (1930).

It is not necessary to the validity of an ordinance regulating the establishment of gasoline filling stations in a municipality that it substantially comply with the provisions of the statutes as to zoning, since the regulation of filling stations comes within the State police power which has been conferred on municipalities by the general law. Shuford v. Waynesville, 214 N.C. 135, 198 S.E. 585 (1938).

Storage of Gasoline.—See Fayetteville v. Spur Distributing Co., 216 N.C. 596, 5 S.E.2d 838 (1939).

Regulation of Massage Parlors. — See Cheek v. City of Charlotte, 273 N.C. 293, 160 S.E.2d 18 (1968).

Fluoridation Ordinance. — A municipal ordinance for the fluoridation of the city water supply is enacted in the exercise of public policy, and the courts will not interfere therewith in the absence of a showing that the ordinance is so unreasonable, oppressive, and subversive as to amount to an abuse rather than a legitimate exercise of the legislative power. Stroupe v. Eller, 262 N.C. 573, 138 S.E.2d 240 (1964).

Mobile Homes May Not Be Prohibited Per Se.—A well-constructed and equipped mobile home connected with the public water, sewer and electric systems could not be deemed per se "detrimental to the health, morals, comfort, safety, convenience and welfare of the people" of a town within the purview of subdivision (6) of former § 160-200; consequently, that subdivision did not confer upon a municipality the authority to enact an ordinance prohibiting the use anywhere within its limits of a single mobile home as a permanent residence. Town of Conover v. Jolly, 277 N.C. 439, 177 S.E.2d 879 (1970).

Mobile Home Is Not Nuisance Per Se.—Subdivision (26) of former § 160-200 conferred upon cities and towns the power to prevent and abate nuisances, but a mobile home is not a nuisance per se. Town of Conover v. Jolly, 277 N.C. 439, 177 S.E.2d 879 (1970).

Encroachment on Street by Buildings.—Any permanent structure or purpresture which materially encroaches upon a public street and impedes travel is a nuisance per se, and may be abated, notwithstanding space is left for the passage of the public, and a failure on the part of a city to abate it in a reasonable time will make it liable as a joint tort-feasor. Graham v. Charlotte, 186 N.C. 649, 120 S.E. 466 (1923).

Forbidding Lumber Yards in Residential Sections. — In Turner v. New Bern, 187 N.C. 541, 122 S.E. 469 (1924), the principle was laid down: "Under the provision of [a statute similar to this section] and under the provision of its charter authorizing a city to pass needful ordinances for its government not inconsistent with the law to secure the health, quiet, safety—general welfare clause—within its limits, etc., it is within the valid discretionary exercise of the police powers of the municipality to pass an ordinance forbidding the erection of lumber yards within a long-established, exclusively residential portion, and when this discretionary power has not been abused the courts will not interfere." Angelo v. Winston-Salem, 193 N.C. 207, 136 S.E. 489 (1927).

Health Ordinances.—A city has power to require that a dealer in second-hand clothing turn them over to the city to be disinfected and the exercise of the power cannot be considered as a restriction of an owner over his property, but is only the proper and lawful use of authority to protect the health of its citizens from diseases. Rosenbaum v. New Bern, 118 N.C. 83, 24 S.E. 1 (1896).

A municipal corporation has a legal right to destroy mosquitoes detrimental to the health and comfort of its residents. Moore v. Plymouth, 249 N.C. 423, 106 S.E.2d 695 (1959).

Regulation of Markets. — A city in the exercise of statutory authority may enact a valid penal ordinance as affecting the health of its citizens, and under its police power, require that meats, fish, oysters, and perishable matter to be sold at a sanitary market building containing refrigeration and other sanitary methods, under proper inspection, where adequate accommodation may be obtained at a reasonable rental, not for profit, and may exclude such business within a prescribed territory therefrom, the location of the markethouse being reasonably suitable to the business or trades specified. Angelo v. Winston-Salem, 193 N.C. 207, 136 S.E. 489 (1927).

Hog Pens.—"The board of town commissioners could forbid the keeping of hog pens in the town to such an extent as they might deem necessary to prevent nuisances to the public, and, indeed, they could have done so without the express authority." State v. Hord, 122 N.C. 1092, 29 S.E. 952 (1898).

Ordinance against Hogs at Large. — A town ordinance declaring that "all hogs, etc., found running at large within the town" shall be taken up or impounded, is valid, whether the owner resides within the corporate limits of such town or not. Rose v. Hardie, 98 N.C. 44, 4 S.E. 41 (1887).

Insulting an Officer.—The commissioners of a town have no authority to make it unlawful for one to insult an officer or police while in the discharge of his duty, nor to provide a fine for one convicted of such offense. State v. Clay, 118 N.C. 1234, 24 S.E. 492 (1896).

Indecent Language or Cursing.—An ordinance which forbids the use of "abusive or indecent language, cursing, swearing or any loud or boisterous talking, hallooing or any other disorderly conduct" within the corporate limits of a town, and imposes a fine of twenty-five dollars for a violation of it, may be enacted by proper authorities under the powers granted to them in the general law, and such an ordinance is reasonable. State v. Merritt, 83 N.C. 677 (1880); State v. McNinch, 87 N.C. 567 (1882); State v. Cainan, 94 N.C. 880 (1886); State v. Earnhardt, 107 N.C. 789, 12 S.E. 426 (1890).

Authority to abate nuisances is liberally construed by the courts for the benefit of the citizens. State v. Beacham, 125 N.C. 652, 34 S.E. 447 (1899).

Liability for Failure to Abate.—A municipal corporation is not civilly liable for the failure to pass ordinances to preserve the public health or otherwise promote the public good nor for any omission to enforce the ordinances enacted under the legislative powers granted in its charter, or to see that they are properly observed by its citizens, or those who may be resident within the corporate limits. Bunch v. Edenton, 90 N.C. 431 (1886); Hull v. Roxboro, 142 N.C. 453, 55 S.E. 351, 12 L.R.A. (n.s.) 638 (1906); Harrington v. Greenville, 159 N.C. 632, 75 S.E. 849 (1912).

But a city is liable in damages for failure to abate in a reasonable time a nuisance that amounts to an obstruction in a street. Dillon v. Raleigh, 124 N.C. 184, 32 S.E. 548 (1899).

Compensation.—An owner of property is not entitled to compensation for property rightfully destroyed or damaged by a city in abating a nuisance; the reason for this is that the destruction or damage is for public safety or health and is not a taking of private property for public use without compensation or due process in the constitutional sense. Rhyne v. Mount Holly, 251 N.C. 521, 112 S.E.2d 40 (1960).

But a municipality is liable for impairing, removing or destroying property, ostensibly in the abatement of a nuisance, where the thing or condition in question is not a nuisance per se, under statute or in fact, or where the thing or condition has not been declared to be a nuisance. Rhyne v. Mount Holly, 251 N.C. 521, 112 S.E.2d 40 (1960).

Legislative Authority of Board of Aldermen of Winston-Salem.—The General Assembly, exercising the police power of the State, may legislate for the protection of the public health, safety, morals and general welfare of the people, and it has conferred this legislative authority upon the board of aldermen of Winston-Salem. Southern Ry. v. City of Winston-Salem, 275 N.C. 465, 168 S.E.2d 396 (1969).

§ 160A-175. Enforcement of ordinances.—(a) A city shall have power to impose fines and penalties for violation of its ordinances, and may secure injunctions and abatement orders to further insure compliance with its ordinances as provided by this section.

(b) Unless the council shall otherwise provide, violation of a city ordinance shall be a misdemeanor as provided by G.S. 14-4. An ordinance may also provide by express statement that the maximum fine or term of imprisonment to be imposed for its violation shall be some figure or number of days less than the maximum penalties prescribed by G.S. 14-4.

(c) An ordinance may provide that violation shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.

(d) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law.

(e) An ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such an ordinance occurs the city may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the city may execute the order of abatement. The city shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(f) Subject to the express terms of the ordinance, a city ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

(g) A city ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense. (1971, c. 698, s. 1.)

Editor's Note.—The Rules of Civil Procedure are found in § 1A-1.

§ 160A-176. Ordinances effective on city property outside limits.—Unless otherwise provided in the ordinance, all city ordinances shall apply to property and rights-of-way belonging to the city and located outside the corporate limits. (1917, c. 136, sub-ch. 5, s. 2; C. S., s. 2790; 1971, c. 698, s. 1.)

§ 160A-177. Enumeration not exclusive.—The enumeration in this Article or other portions of this Chapter of specific powers to regulate, restrict or prohibit acts, omissions, and conditions shall not be deemed to be exclusive or a limiting factor upon the general authority to adopt ordinances conferred on cities by G.S. 160A-174. (1971, c. 698, s. 1.)

§ 160A-178. Regulation of solicitation campaigns and itinerant merchants.—A city may by ordinance regulate, restrict or prohibit the solicitation of contributions from the public for any charitable or eleemosynary purpose, and also the business activities of itinerant merchants, salesmen, promoters, drummers, peddlers, or hawkers. These ordinances may include, but shall not be limited to, requirements that an application be made and a permit issued, that an investigation be made, that activities be reasonably limited as to time and place, that proper credentials and proof of financial stability be submitted, that not more than a stated percentage of contributions to solicitation campaigns be retained for administrative expenses, and that an adequate bond be posted to protect the public from fraud. (1963, c. 789; 1971, c. 698, s. 1.)

License to Beg or Solicit Contributions on Streets.—A city ordinance in pursuance of subdivision (11) of former § 160-200 requiring a license to be issued by the municipal authorities to beg upon the city streets or to solicit contributions for charitable or religious purposes, in accordance with whether the person or purpose is ascertained by such authorities as worthy or whether the moneys solicited will be properly applied, is a valid and undiscriminating exercise of a police power, and not unlawful as an interference with the religious liberties of our people, or an obstruction to the lawful pursuit of their business. State v. Hundley, 195 N.C. 377, 142 S.E. 330 (1928).

Peddling.—For case decided prior to the 1963 amendment adding subdivision (42) of former § 160-200, see State v. Byrd, 259 N.C. 141, 130 S.E.2d 55 (1963), wherein it was held that a municipality had implied power to regulate, but not prohibit, selling on streets from mobile units. Subdivision (42) gave authority to prohibit peddlers, etc.

§ 160A-179. Regulation of begging.—A city may by ordinance prohibit or regulate begging or otherwise canvassing the public for contributions for the private benefit of the solicitor or any other person. (1971, c. 698, s. 1.)

§ 160A-180. Regulation of aircraft overflights.—A city may by ordinance regulate the operation of aircraft over the city. (1971, c. 698, s. 1.)

§ 160A-181. Regulation of places of amusement.—A city may by ordinance regulate places of amusement and entertainment, and may regulate, restrict or prohibit the operation of pool and billiard halls, dance halls, carnivals, circuses, or any itinerant show or exhibition of any kind. Places of amusement and entertainment shall include coffee houses, cocktail lounges, night clubs, beer halls, and similar establishments, but any regulations thereof shall be consistent with any permits or licenses issued by the State Board of Alcoholic Control. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1971, c. 698, s. 1.)

Regulation of Dance Halls.—Cities had power, among other things, to license, prohibit, and regulate dance halls, by express provisions of former § 160-200, and in the interest of public morals provide for the revocation of such licenses, as valid exercise of the State's inherent police power, made applicable to cities and towns generally. State v. Vanhook, 182 N.C. 831, 109 S.E. 65 (1921).

An ordinance requiring the consent of the board of directors of the city before keeping a dance hall therein is not objectionable as an arbitrary exercise of power, or as being at the pleasure of the board, but comes within its limited legal discretion, which the courts will not permit it to abuse, but will not disturb in the absence of its abusive use. State v. Vanhook, 182 N.C. 831, 109 S.E. 65 (1921) (decided under former § 160-200).

§ **160A-182. Abuse of animals.**—A city may by ordinance define and prohibit the abuse of animals. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1971, c. 698, s. 1.)

§ **160A-183. Regulation of explosive, corrosive, inflammable, or radioactive substances.**—A city may by ordinance restrict, regulate or prohibit the sale, possession, storage, use, or conveyance of any explosive, corrosive, inflammable, or radioactive substances, or any weapons or instrumentalities of mass death and destruction within the city. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1971, c. 698, s. 1.)

§ **160A-184. Loud noises.**—A city may by ordinance regulate, restrict, or prohibit the production or emission of loud noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens. (1971, c. 698, s. 1.)

Prevention of Disturbing Noises.—The protection of the well-being and tranquility of a community by the reasonable prevention of disturbing noises is within the city's power to control nuisances. State v. Dorsett, 3 N.C. App. 331, 164 S.E.2d 607 (1968) (decided prior to the enactment of this section).

§ **160A-185. Emission of pollutants.**—A city may by ordinance regulate, restrict, or prohibit the emission or disposal of smoke, noxious chemicals, or any other substances or effluents that tend to pollute or contaminate land, water, or air, rendering it unfit for or dangerous to human, animal, or plant life. Any such ordinance shall be consistent with and supplementary to State and federal laws and regulations. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1949, c. 594, s. 2; 1971, c. 698, s. 1.)

§ **160A-186. Regulation of domestic animals.**—A city may by ordinance regulate, restrict, or prohibit the keeping, running, or going at large of any domestic animals, including dogs and cats. The ordinance may provide that animals allowed to run at large in violation of the ordinance may be seized and sold or destroyed after reasonable efforts to notify their owner. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1971, c. 698, s. 1.)

Ordinance against Keeping Cows.—An ordinance forbidding the keeping of cows within a certain portion of the city is valid. State v. Stowe, 190 N.C. 79, 128 S.E. 481 (1925) (decided under prior similar provisions).

§ **160A-187. Possession or harboring of wild animals.**—A city may by ordinance regulate, restrict, or prohibit the possession or harboring within the city of wild animals dangerous to person or property or offensive to the senses. (1971, c. 698, s. 1.)

§ **160A-188. Bird sanctuaries.**—A city may by ordinance create and establish a bird sanctuary within the city limits. The ordinance may not protect any birds classified as unprotected by the Wildlife Resources Commission or by law. When a bird sanctuary has been established, it shall be unlawful for any person to hunt, kill, trap, or otherwise take any protected birds within the city limits except pursuant to a permit issued under G.S. 113-87. (1951, c. 411, ss. 1, 2; 1971, c. 698, s. 1.)

§ **160A-189. Firearms.**—A city may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place within the city except when used in defense of person or property or pursuant to lawful directions of law-enforcement officers, and may regulate the display of firearms on the streets, sidewalks, alleys, or other public property. Nothing in this section shall be construed to limit a city's authority to take action under Article 36A of Chapter 14 of the General Statutes. (1971, c. 698, s. 1.)

§ **160A-190. Pellet guns.**—A city may by ordinance regulate, restrict, or prohibit the sale, possession or use within the city of pellet guns or any other mechanism or device designed or used to project a missile by compressed air or mechanical action with less than deadly force. (1971, c. 698, s. 1.)

§ **160A-191. Limitations on enactment of Sunday-closing ordinances.**—No ordinance regulating or prohibiting business activity on Sundays shall be enacted unless the council shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once each week for four successive weeks before the date of the hearing. The notice shall fix the date, hour and place of the public hearing, and shall contain a statement of the council's intent to consider a Sunday-closing ordinance, the purpose for such an ordinance, and one or more reasons for its enactment. No ordinance shall be held invalid for failure to observe the procedural requirements for enactment imposed by this section unless the issue is joined in an appropriate proceeding initiated within 90 days after the date of final enactment. This section shall not apply to ordinances enacted pursuant to G.S. 18-107. (1967, c. 1156, s. 1; 1971, c. 698, s. 1.)

§ **160A-192. Regulation of trash and garbage.**—(a) A city may by ordinance regulate the disposal of solid wastes within the city, and may require the owners or occupants of houses and other buildings to place solid waste in specified places or receptacles for the convenience of city collection and disposal, and may impose charges for such collection and disposal.

(b) Any two or more cities, counties, sanitary districts, or any combination thereof, are authorized to enter into contracts and agreements for the joint ownership, construction, operation and maintenance of solid waste collection and disposal systems and facilities. In operating such systems and facilities, the participating units may exercise jointly any power that they might exercise individually with respect to solid waste collection and disposal systems and facilities. (1917, c. 136, sub-ch. 7, s. 3; C. S., s. 2799; 1971, c. 698, s. 1.)

Editor's Note.—The cases and opinion of the Attorney General cited in the following note were decided or issued under former similar provisions.

Opinions of Attorney General.—Mr. E.A. Parker, Benton Town Attorney, 11/20/69.

Garbage removal by the municipality is a governmental function. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

The fact that the city is permitted to charge the cost of a service does not change its act from a governmental function to a business or profit, or affect its liability for the negligent acts of its agents or employees therein. James v. Charlotte, 183 N.C. 630, 112 S.E. 423 (1922).

City Not Liable for Injury to Employee.—An incinerator operated by a city for the burning of its garbage comes within the authority conferred upon it by statute and, its operation being a purely governmental function, exercised as a local agency of State government, the city is not liable for an injury caused by defect therein to an employee, in the absence of statutory provision to the contrary. Scales v. Winston-Salem, 189 N.C. 469, 127 S.E. 543 (1925).

§ 160A-193. Abatement of public health nuisances.—A city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health. The expense of the action shall be paid by the person in default, and, if not paid, shall be a lien upon the land or premises where the trouble arose, and shall be collected as unpaid taxes. (1917, c. 136, sub-ch. 7, s. 4; C. S., s. 2800; 1971, c. 698, s. 1.)

§ 160A-194. Regulating and licensing businesses, trades, etc.—A city may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience. In licensing trades, occupations, and professions, the city may, consistent with the general law of the State, require applicants for licenses to be examined and charge a reasonable fee therefor. Nothing in this section shall impair the city's power to levy privilege license taxes on occupations, businesses, trades, professions, and other activities pursuant to G. S. 160A-211.

Nothing in this section shall authorize a city to examine or license a person holding a license issued by an occupational licensing board of this State as to the profession or trade that he has been licensed to practice or pursue by the State. (1971, c. 698, s. 1.)

§§ 160A-195 to 160A-205: Reserved for future codification purposes.

ARTICLE 9.

Taxation.

§ 160A-206. General power to impose taxes.—A city shall have power to impose taxes only as specifically authorized by act of the General Assembly. Except when the statute authorizing a tax provides for penalties and interest, the power to impose a tax shall include the power to impose reasonable penalties for failure to declare tax liability, if required, or to impose penalties or interest for failure to pay taxes lawfully due within the time prescribed by law or ordinance. The power to impose a tax shall also include the power to provide for its administration in a manner not inconsistent with the statute authorizing the tax. (1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former statutory provisions.

Taxes on Lottery Applied Strictly.—A city having power to levy a heavy tax on "gift enterprises" must restrict this tax to enterprises that are of a lottery nature. A dealer in trading stamps cannot be taxed, for the tax cannot be applied to a business merely because of its peculiarity. Winston v. Beeson, 135 N.C. 271, 47 S.E. 457 (1904).

Power to Appoint Special Tax Collector.—Whenever the authorities of a town shall be commanded to levy and collect taxes they may appoint a special tax collector to collect the same. But this power to appoint such a collector is additional, and does not abridge their right to require the collection to be made by the regular officer appointed for that purpose. Webb v. Beaufort, 88 N.C. 496 (1883).

Recovery of Excess Tax.—In order to recover money paid a municipality as a license tax in excess of the amount the town was lawfully authorized to collect, and in the absence of statutory regulations, or under the common law, it is necessary that the one so paying should have done so under protest at the time or under circumstances of duress or such as would endanger his person or property; and where the payment has been voluntarily made, the action may not be successfully maintained. Blackwell v. Gastonia, 181 N.C. 378, 107 S.E. 218 (1921).

§ 160A-207. Remedies for collecting taxes.—In addition to any other remedies provided by law, the remedies of levy, garnishment, and attachment shall be available for collecting any city tax under the rules and procedures prescribed by the Machinery Act (G.S. 105-271 to 105-395) for the enforcement of tax liability against personal property, except that:

(1) The remedies shall become available on the due date of the tax and not before that time;

(2) Rules dependent on the existence of a lien against real property for the same tax shall not apply; and

(3) The lien acquired by levy, garnishment, or attachment shall be inferior to any prior or simultaneous lien for property taxes acquired under the Machinery Act (G.S. 105-271 to 105-395). (1971, c. 698, s. 1.)

§ **160A-208. Continuing taxes.** — Except for taxes levied on property under the Machinery Act (G.S. 105-271 to 105-395), a city may impose an authorized tax by a permanent ordinance that shall stand from year to year until amended or repealed, and it shall not be necessary to reimpose the tax in each annual budget ordinance. (1971, c. 698, s. 1.)

§ **160A-209. Property taxes.**—(a) A city shall have power to levy taxes on property having a situs within the corporate limits of the city under the rules and according to the procedures prescribed by the Machinery Act (G.S. 105-271 to 105-395). Unless otherwise specifically provided by the law, authority to engage in and undertake any function or activity shall include authority to levy property taxes to defray the expense thereof, subject to the limitations imposed by Article V, Sec. 2(5) of the Constitution of North Carolina.

(b) The property tax shall not be levied at an effective rate exceeding one dollar and fifty cents ($1.50) on each one hundred dollars ($100) of appraised value of property subject to taxation before the application of any assessment ratio. This limitation shall not apply to property taxes levied for the purpose of paying the principal and interest on bonds, notes, or other evidences of indebtedness, nor to special taxes levied for the purpose of meeting the expense of additional law-enforcement personnel and equipment that may be required to suppress riots or other civil disorders involving an extraordinary breach of law and order within the jurisdiction of the city, nor to property taxes approved by a vote of the people. (1917, c. 138, s. 37; 1919, c. 178, s. 3(37); C. S., s. 2963; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1947, c. 506; 1959, c. 1250, s. 3; 1971, c. 698, s. 1.)

The word "property" includes moneys, credits, investments, and other choses in action. Redmond v. Commissioners, 106 N.C. 122, 10 S.E. 845 (1890) (decided under former statutory provisions).

§ **160A-210. Capitation tax.**—For the fiscal year 1971-1972, a city shall have power to levy a capitation tax not to exceed one dollar ($1.00) on persons subject to the county capitation tax. From and after July 1, 1972, cities may not levy capitation taxes. (R. C., c. 111, s. 13; 1862, c. 51; Code, s. 3800; Rev., s. 2924; C. S., s. 2677; 1949, c. 933; 1971, c. 698, s. 1.)

§ **160A-211. Privilege license taxes.**—Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. (R. C., c. 111, s. 13; 1862, c. 51; Code, s. 3800; Rev., s. 2924; C. S., s. 2677; 1949, c. 933; 1971, c. 698, s. 1.)

Editor's Note.—The cases and opinions of the Attorney General cited in the following note were decided or issued under former similar statutory provisions.

Taxes on Trades and Professions.—Since the enactment of provisions similar to this section, taxes laid upon trades and professions under the name of privilege taxes have been laid expressly for revenue. State v. Irvin, 126 N.C. 989, 35 S.E. 430 (1900).

The power to levy a tax on all trades includes "any employment or business embarked into for gain or profit." Lenoir Drug Co. v. Lenoir, 160 N.C. 571, 76 S.E. 480 (1912).

Unless inconsistent with a special law or charter of a city a tax may be levied on a person engaging in any trade within the city. Guano Co. v. Tarboro, 126 N.C. 68, 35 S.E. 231 (1900).

The charter of a city giving it certain powers in respect to the levying of franchise taxes on trades and professions, etc., and the general statute will be construed together in determining the legislative grant of power to the municipality to levy taxes of this class. Hilton v. Harris, 207 N.C. 465, 177 S.E. 411 (1934); State v. Bridgers, 211 N.C. 235, 189 S.E. 869 (1937).

Same—Classification.—A municipal corporation is empowered to tax trades or professions carried on or enjoyed within the city, unless otherwise provided by law, but its classification of trades and professions for taxation must be based upon reasonable distinctions and all persons similarly situated must be treated alike. Kenny Co. v. Brevard, 217 N.C. 269, 7 S.E.2d 542 (1940).

The law of uniformity does not prohibit the classification by the municipality of dealers in a particular kind of merchandise separately from those whose business it is to sell other articles falling within the same generic term. Rosenbaum v. New Bern, 118 N.C. 83, 24 S.E. 1 (1896).

But an ordinance requiring a license of livery men, and providing that it shall include any persons making contract for hire in town, or "any person carrying any person with a vehicle out of town for hire," is void as being unreasonable. Plymouth v. Cooper, 135 N.C. 1, 47 S.E. 129 (1904).

Tax on Firm Delivering in City.—Construing the charter of a city in pari materia with the general statute, the city is given power to tax a firm outside the city, but which delivers products inside the city to customers procured by its salesman, and collects for its goods upon delivery, such trade being "carried on or enjoyed within the city." Hilton v. Harris, 207 N.C. 465, 177 S.E. 411 (1934).

A manufacturer of fertilizers maintaining its sales department in another state from which sales are exclusively made for fertilizer stored for distribution only in a city in this State, is liable under an ordinance of the city levying a tax upon callings and professions, naming among others "fertilizer manufacturers' agents or dealers," the tax being for the protection afforded by the city in the exercise of such occupation, and the profits derived therefrom. Guano Co. v. New Bern, 158 N.C. 354, 74 S.E. 2 (1912).

Privilege License Taxes on Out-of-Town Beer Wholesaler. — See opinion of Attorney General to Mrs. Mary W. Moss, Clerk and Tax Collector, Town of Creedmoor, 1/28/70.

Municipality May Levy Privilege License Tax on Court Reporters.—See opinion of Attorney General to Mr. William I. Thornton, Jr., Assistant Greensboro City Attorney, 8/13/70.

Limitation on License Tax on Use of Motor Vehicle.—Section 20-97 expressly prohibits a municipality from levying a license or privilege tax in excess of $1.00 upon the use of any motor vehicle licensed by the State, and must be construed with and operate as an exception to, and limitation upon the general power to levy license and privilege taxes upon businesses, trades, and professions granted by charter and general statute, and provisions of a municipal ordinance imposing a license tax upon the operation of passenger vehicles for hire in addition to the $1.00 theretofore imposed by it upon motor vehicles generally, is void, nor may the additional municipal tax be sustained upon the theory that it is a tax upon the business of operating a motor vehicle for hire rather than ownership of the vehicle, since the word "business" and the word "use" as used in the section means the same thing. Cox v. Brown, 218 N.C. 350, 11 S.E.2d 152 (1940).

§ **160A-212. Animal taxes.** — A city shall have power to levy an annual license tax on the privilege of keeping any domestic animal, including dogs and cats, within the city. This section shall not limit the city's authority to enact ordinances under G.S. 160A-186. (R. C., c. 111, s. 13; 1862, c. 51; Code, s. 3800; Rev., s. 2924; C. S., s. 2677; 1949, c. 933; 1971, c. 698, s. 1.)

Tax Is on Privilege of Keeping Dog.—Although a dog is property, a dog tax is not directly on the dog as property but is upon the privilege of keeping a dog. Mowery v. Salisbury, 82 N.C. 175 (1880) (decided under former similar provisions).

§ **160A-213. Motor vehicle taxes.**—A city may impose an annual license tax on motor vehicles as permitted by G.S. 20-97. (1971, c. 698, s. 1.)

§ 160A-214. Cable television franchise tax.—A city may impose an annual franchise tax on cable television companies franchised under G.S. 160A-320 [160A-319] to operate within the city. (1971, c. 698, s. 1.)

§ 160A-215: Reserved for future codification purposes.

ARTICLE 10.

Special Assessments.

§ 160A-216. Authority to make special assessments.—Any city is authorized to make special assessments against benefited property within its corporate limits for:

(1) Constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets;
(2) Constructing, reconstructing, paving, widening, and otherwise building or improving sidewalks in any public street;
(3) Constructing, reconstructing, extending, and otherwise building or improving waterlines;
(4) Constructing, reconstructing, extending, and otherwise building or improving sanitary sewer lines; and
(5) Constructing, reconstructing, extending, and otherwise building or improving storm sewer and drainage systems. (1971, c. 698, s. 1.)

Editor's Note.—Most of the cases and opinions of the Attorney General cited in the annotations to the sections of this Article were decided or issued under former §§ 160-78 to 160-105 or prior similar provisions.

For article, "Transferring North Carolina Real Estate, Part I: How the Present System Functions," see 49 N.C.L. Rev. 413 (1971).

Ownership of Street Prerequisite to Assessment for Improvement.—The ownership by the city of a street is a prerequisite to the power of the city to levy an assessment for street improvements against abutting owners thereon. Efird v. Winston-Salem, 199 N.C. 33, 153 S.E. 632 (1930).

Laws Construed Separately.—The general statutes authorizing cities and towns to issue bonds and assess abutting lands for improving and paving streets, and not requiring that the questions be submitted to the voters, are additional and independent of special or local laws, and where the latter required the question to be first submitted to the voters for their approval, and these requirements have been fully met, under the private act, the transactions thereunder complete and their validity unquestioned, a railroad company may not resist an assessment made under the general law, upon the ground that the provisions of the private acts, requiring the approval of the voters, control the question of the validity of the assessments. Kinston v. Atlantic, etc., R. Co., 183 N.C. 14, 110 S.E. 645 (1922). See § 160A-3.

In case a special or local law is invalid, the general statutes may be followed in making local improvements. But their provisions must be complied with. Cottrell v. Lenoir, 173 N.C. 138, 91 S.E. 827 (1917).

Power to Impose Assessments within Right of Taxation.—The power to impose assessments upon owners whose lands abut upon the streets of a city to be improved, comes within the sovereign right of taxation, and no license, permit, or franchise from the legislature or a municipal board will be construed to establish an exemption from the proper exercise of this power, or in derogation of it, unless these bodies are acting clearly within their authority, and the grant itself is in terms so clear and explicit as to be free from substantial doubt. Durham v. Durham Public Service Co., 182 N.C. 333, 109 S.E. 40 (1921).

School Property Held Subject to Assessment.—Lands owned by "The School Committee of Raleigh Township, Wake County," and used exclusively for public school purposes, were held liable for assessment for street improvements made by the city of Raleigh. Raleigh v. Raleigh City Administrative Unit, 223 N.C. 316, 26 S.E.2d 591 (1943).

Also Public Parks, etc.—In the absence of constitutional or statutory provision to the contrary, the public property of a municipality, such as parks, etc., is subject to assessment for local improvements of its streets, and when there is no provision exempting them, a public park of a city is included within the intent and meaning of Laws 1915, ch. 56, providing that lands abutting on a street to be paved or improved should be assessed for such improvements to the extent of the respective frontage of the lots thereon, in a certain proportionate part of the cost, by the "front foot" rule. Tarboro v. Forbes, 185 N.C. 59, 116 S.E. 81 (1923).

Interference by Courts.—Where an act allows assessments to be made by a city on property abutting on a street for pavement or improvements thereon, the legislative declaration on the subject is conclusive as to the necessity and benefit of the proposed improvements, and in applying the principle and estimating the amount as against the owners, individual or corporate, the court may interfere only in case of palpable and gross abuse. Kinston v. Atlantic, etc., R. Co., 183 N.C. 14, 110 S.E. 645 (1922).

§ 160A-217. Petition for street and sidewalk improvements.—(a) A city shall have no power to levy special assessments for street and sidewalk improvements unless it receives a petition for the improvements signed by at least a majority in number of the owners of property to be assessed, who must represent at least a majority of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved. Unless the petition specifies another percentage, not more than fifty percent (50%) of the cost of the improvement may be assessed (not including the cost of improvements made at street intersections).

(b) Property owned by the United States shall not be included in determining the lineal feet of frontage on the improvement, nor shall the United States be included in determining the number of owners of property abutting the improvement. Property owned by the State of North Carolina shall be included in determining frontage and the number of owners only if the State has consented to assessment in the manner provided in G.S. 160A-221. Property owned by railroad companies shall be included in determining frontage and the number of owners to the extent that the property is subject to assessment under G.S. 160A-222. Property owned by railroad companies that is not subject to assessment shall not be included in determining frontage and the number of owners. If it is necessary to exclude property owned by the United States, the State of North Carolina, or a railroad company in order to obtain a valid petition under subsection (a), not more than fifty percent (50%) of the cost (not including the cost of improvement at street intersections) may be assessed unless all of the owners subject to assessment agree to a higher percentage.

(c) No right of action or defense asserting the invalidity of street or sidewalk assessments on grounds that the city did not comply with this section in securing a valid petition shall be asserted except in an action or proceeding begun within 90 days after publication of the notice of adoption of the preliminary assessment resolution. (1915, c. 56, ss. 4, 5; C. S., 2706, 2707; 1955, c. 675; 1963, c. 1000, s. 1; 1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-216.

Petition Necessary.—An assessment for widening a street under contract with the Highway Commission without petition of a majority of the owners is invalid. Sechriest v. Thomasville, 202 N.C. 108, 162 S.E. 212 (1932).

When City Owns Part of Abutting Land.—A town is subject to assessment on its abutting property, and the rule of a majority of lineal feet and number of owners will apply just the same when a city owns a part of the abutting land as any other time. And if the city fails to sign when its signature is necessary to have a majority of lineal feet, the assessment is a nullity. Tarboro v. Forbes, 185 N.C. 59, 116 S.E. 81 (1923).

Sufficiency of Petition.—In Tarboro v. Forbes, 185 N.C. 59, 116 S.E. 81 (1923), it was held that where it appears upon the face of the petition, as a matter of law, that the signers of the petition do not represent a majority of the lineal feet of the total frontage on the street, proposed to be improved, the determination of the governing body as to the sufficiency of the petition is not final or conclusive. Insofar as the sufficiency of the petition involves only questions of fact, the determination of the governing body, in the absence of fraud, and when acting in good faith, is final and conclusive. Gallimore v. Thomasville, 191 N.C. 648, 132 S.E. 657 (1926).

Sufficiency of Complaint Alleging Invalidity of Petition.—In an action to have an assessment levied against plaintiff's property declared invalid, a complaint alleging that only one of the signatures of abutting property owners to the petition for improvements was valid, without alleging that the assessment was based on the petition, what other signatures appeared on the petition or facts supporting the conclusion that the other signatures were invalid, was insufficient to state a cause of action, and demurrer to complaint was properly sustained. Broadway v. Asheboro, 250 N.C. 232, 108 S.E.2d 441 (1959).

Approval of Petition Final.—Where the municipal authorities have approved the petition of owners of land abutting upon a street proposed to be improved in accordance with the statute, their approval and order for the improvements to be made is final, except where it appears from the face of the petition, as a matter of law, that the signers do not represent a majority of the owners or of the lineal feet required by statute. Jones v. Durham, 197 N.C. 127, 147 S.E. 824 (1929).

Procedure Must Fulfill Essential Requirements.—While a slight informality of procedure or a failure to observe a provision which is merely directory will not generally affect the validity of an assessment, it is nevertheless true that any substantial and material departure from the essential requirements of the law under which the improvement is made will render an assessment therefor invalid. Tarboro v. Forbes, 185 N.C. 59, 116 S.E. 81 (1923).

Where levies are made without a petition, the assessments are invalid but not void, and the legislature has the power to validate the assessments by subsequent legislative act, the legislature having the power to authorize the assessments in the first instance. Crutchfield v. Thomasville, 205 N.C. 709,. 172 S.E. 366 (1934).

Absence of Petition Cured by Legislation.—When improvements are made under an assessment, and there has been no petition as required by statute, the assessments are invalid. However, this defect may be cured by a validating act of the legislature although the act is retrospective. Holton v. Mockville, 189 N.C. 144, 126 S.E. 326 (1925); Gallimore v. Thomasville, 191 N.C. 648, 132 S.E. 657 (1926).

The General Assembly having the power to confer upon the authorities of a municipal corporation power to improve its streets and sidewalks and to assess the owners of abutting property with a part of the cost of such improvements without a petition, as indicated by this section, has the power to validate proceedings for the improvement of streets and sidewalks which were begun and which have been concluded without an initial petition. Crutchfield v. Thomasville, 205 N.C. 709, 172 S.E. 366 (1934).

Improvement of Only One Side of Street.—An assessment levied for street improvements on abutting property owners is not void on the ground that the assessment was for improving only one side of a street. Waxhaw v. S.A.L. Ry. Co., 195 N.C. 550, 142 S.E. 761 (1928).

Signatures as Evidence of Agency.—Where the wife owned the locus in quo and the petition for public improvements was signed by the husband and by the wife, the signature of the wife as the owner of the property along with the signature of the husband is sufficient evidence to be submitted to the jury on the issue of whether the wife constituted her husband her agent to subsequently act for her in the premises, rendering the listing of the property in his name on the assessment roll, and the special assessment book, and the giving of the statutory notices to him, sufficient, thus rendering the lien against the property valid and enforceable as against her and as against her subsequent grantee. Wadesboro v. Coxe, 218 N.C. 729, 12 S.E.2d 223 (1940).

Resolution as Evidence.—In an action by a municipality to enforce a lien for public improvements, objection that plaintiff failed to introduce in evidence the petition for improvements signed by the owners of a majority of the lineal feet frontage abutting the improvements was held untenable where the original resolution of the city introduced in evidence recited a proper petition and that it was duly certified by the clerk, since if such finding was erroneous, the remedy for correction was by appeal. Asheboro v. Miller, 220 N.C. 298, 17 S.E.2d 105 (1941).

§ 160A-218. Basis for making assessments. — Assessments may be made on the basis of:

(1) The frontage abutting on the project, at an equal rate per foot of frontage, or

(2) The area of land served, or subject to being served, by the project, at an equal rate per unit of area, or

(3) The value added to the land served by the project, or subject to being served by it, being the difference between the appraised value of the land without improvements as shown on the tax records of the county, and the appraised value of the land with improvements according to the appraisal standards and rules adopted by the county at its last revaluation, at an equal rate per dollar of value added; or

(4) The number of lots served, or subject to being served, where the project involves extension of an existing system to a residential or commercial subdivision, at an equal rate per lot; or

(5) A combination of two or more of these bases.

Whenever the basis selected for assessment is either area or value added, the council may provide for the laying out of benefit zones according to the distance of benefited property from the project being undertaken, and may establish differing rates of assessment to apply uniformly throughout each benefit zone.

For each project, the council shall endeavor to establish an assessment method from among the bases set out in this section which will most accurately assess each lot or parcel of land according to the benefit conferred upon it by the project. The council's decision as to the method of assessment shall be final and conclusive and not subject to further review or challenge. (1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-216.

Assessments for Drains. — For constructing drains it is not necessary that the assessments be the same, for cost will be different because of difference in location and slope of the several lots. Gallimore v. Thomasville, 191 N.C. 648, 132 S.E. 657 (1926).

§ **160A-219. Corner lot exemptions.**—The council shall have authority to establish schedules of exemptions from assessments for corner lots when a project is undertaken along both sides of such lots. The schedules of exemptions shall be based on categories of land use (residential, commercial, industrial, or agricultural) and shall be uniform for each category. The schedule of exemptions may not provide exemption of more than seventy-five percent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater. (1971, c. 698, s. 1.)

§ **160A-220. Lands exempt from assessment.**—No lands within a city, except as herein provided, shall be exempt from special assessments except lands belonging to the United States that are exempt under the provisions of federal statutes. (1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-216.

Charitable Corporation Not Exempt from Special Assessments.—See opinion of Attorney General to Dr. H.G. Jones, Director, Department of Archives and History, 3/19/70.

§ **160A-221. Assessments against lands owned by the State.**—When any city proposes to make local improvements that would benefit lands owned by the State of North Carolina or any board, agency, commission, or institution thereof, the council may request the Council of State to consent to special assessments against the property. The Council of State may authorize the Director of Administration to give consent for special assessments against State property, but the city may appeal to the Council of State if the Director of Administration refuses to give consent. When consent is given for special assessments against State lands, the Council of State may direct that the assessment be paid from the Contingency and Emergency Fund of the State of North Carolina or from any other available funds. If consent to the assessment is refused, the State-owned property shall be exempt from assessment. (1971, c. 698, s. 1.)

§ 160A-222. Assessments against railroads.—Assessments shall not be made against land owned, leased or controlled by a railroad company, except that if there is a building on the land, the portion of railroad property subject to assessment shall be a lot whose frontage equals the actual front footage occupied by the building plus 25 feet on each side thereof, but not more than the amount of land owned, leased, or controlled by the railroad. If a building is placed on land that would have been subject to assessment but for the limitations imposed by this section after an improvement is made, then the railroad company shall be subject to an assessment without interest on the same basis as if the building had been on the property when the improvement was made.

It is the intent of this section to make uniform the law concerning assessments against railroads. To this end, all provisions of law, whether general or local, in conflict with this section are repealed; and no local act taking effect on or after January 1, 1972, shall be construed to modify, amend, or repeal any portion of this section unless it shall specifically so provide by reference hereto. (1965, c. 839, s. 2; 1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former §§ 160-520 and 160-521.

Constitutionality.—This statute exempting railroad right-of-way property from assessment for local improvements is not unconstitutional on the ground it was not authorized by N.C. Const., Art. V, § 2, since those provisions deal with the power of taxation and not with assessments for local improvements. Southern Ry. v. City of Raleigh, 9 N.C. App. 305, 176 S.E.2d 21 (1970), aff'd, 277 N.C. 709, 178 S.E.2d 422 (1971).

Local assessments may be a species of tax but they are not taxes within the meaning of the term as generally understood in constitutional restrictions and exemptions. These assessments proceed upon the theory that when a local improvement enhances the value of neighboring property, it is reasonable and competent for the legislature to provide that such property shall pay for the improvement. Southern Ry. v. City of Raleigh, 277 N.C. 709, 178 S.E.2d 422 (1971).

The General Assembly did not act arbitrarily when, by enactment of former Article 42 of Chapter 160, it determined that such railroad right-of-way property was not benefited by and should not be assessed for the described local improvements. Southern Ry. v. City of Raleigh, 9 N.C. App. 305, 176 S.E.2d 21 (1970), aff'd, 277 N.C. 709, 178 S.E.2d 422 (1971).

Purpose of Section.—The only purpose of this section was to withdraw from municipalities the right to levy an assessment against vacant city lots over which railroads operate their trains. The language of this section is plain, and does not require interpretation. Southern Ry. v. City of Raleigh, 277 N.C. 709, 178 S.E.2d 422 (1971).

Applicability. — The statute applies to prohibit a municipality from imposing an assessment for street paving on railroad right-of-way property on which no building is located. Southern Ry. v. City of Raleigh, 9 N.C. App. 305, 176 S.E.2d 21 (1970), aff'd, 277 N.C. 709, 178 S.E.2d 422 (1971).

The language employed by the legislature in the statute clearly manifests a legislative intent that it be of general application. Southern Ry. v. City of Raleigh, 9 N.C. App. 305, 176 S.E.2d 21 (1970), aff'd, 277 N.C. 709, 178 S.E.2d 422 (1971).

The legislature has the power to determine by statute what property is benefited by local improvements, and the legislative declaration on the subject, in the absence of arbitrary action, is conclusive. Southern Ry. v. City of Raleigh, 9 N.C. App. 305, 176 S.E.2d 21 (1970), aff'd, 277 N.C. 709, 178 S.E.2d 422 (1971).

Notwithstanding Provisions of Municipal Charter.—See Southern Ry. v. City of Raleigh, 9 N.C. App. 305, 176 S.E.2d 21 (1970), aff'd, 277 N.C. 709, 178 S.E.2d 422 (1971).

And Also Power to Determine What Property Is Not Benefited.—The right of the legislature to determine what property is benefited by a street improvement includes the right to determine what property is not benefited thereby. The right to include involves the right to exclude, and the General Assembly by providing that a municipality shall not assess railroad right-of-way property for local improvement "unless there is a building on such right-of-way" acted within its power. Southern Ry. v. City of Raleigh, 277 N.C. 709, 178 S.E.2d 422 (1971).

A street pavement would increase the value of a building by adding to its availability for profitable uses, and the municipality may assess the cost of paving frontage occupied by a building. Southern Ry. v. City of Raleigh, 277 N.C. 709, 178 S.E.2d 422 (1971).

But Not Railroad Right-of-way. — A street pavement adjacent to a railroad right-of-way ordinarily would not increase the value of the right-of-way for railway purposes. Southern Ry. v. City of Raleigh, 277 N.C. 709, 178 S.E.2d 422 (1971).

§ **160A-223. Preliminary resolution; contents.**—Whenever the council decides to finance a proposed project by special assessments, it shall first adopt a preliminary resolution that shall contain the following:

(1) A statement of intent to undertake the project;
(2) A general description of the nature and location of the project;
(3) A statement as to the proposed basis for making assessments, which shall include a general description of the boundaries of the area benefited if the basis of assessment is either area or value added;
(4) A statement as to the percentage of the cost of the work that is to be assessed;
(5) A statement as to which, if any, assessments shall be held in abeyance and for how long;
(6) A statement as to the proposed terms of payment of the assessment; and
(7) An order setting a time and place for a public hearing on all matters covered by the preliminary resolution which shall be not earlier than three weeks nor later than 10 weeks from the date of the adoption of the preliminary resolution. (1971, c. 698, s. 1.)

§ **160A-224. Notice of preliminary resolution.**—At least 10 days before the date set for the public hearing, the council shall publish a notice that a preliminary assessment resolution has been adopted and that a public hearing will be held on it at a specified time and place. The notice shall generally describe the nature and location of the improvement. In addition, at least 10 days prior to the hearing, the council shall cause a copy of the preliminary resolution to be mailed to the owners, as shown on the county tax records, of all property subject to assessment if the project should be undertaken. The person designated to mail these resolutions shall file with the council a certificate showing that they were mailed by first-class mail and on what date. The certificate shall be conclusive as to compliance with the mailing provisions of this section in the absence of fraud. (1971, c. 698, s. 1.)

§ **160A-225. Hearing on preliminary resolution; assessment resolution.**—At the public hearing, the council shall hear all interested persons who appear with respect to any matter covered by the preliminary resolution. After the public hearing, the council may adopt a resolution directing that the project or portions thereof be undertaken. The assessment resolution shall describe the project in general terms (which may be by reference to projects described in the preliminary resolution) and shall set forth the following:

(1) The basis on which the special assessments shall be levied, together with a general description of the boundaries of the area benefited if the basis of assessment is either area or value added;
(2) The percentage of the cost to be specially assessed;
(3) The terms of payment, including the conditions under which assessments are to be held in abeyance, if any.

The percentage of cost to be assessed may not be different from the percentage proposed, and the projects authorized may not be greater in scope than the projects described in the preliminary resolution. If the council decides that a different percentage of the cost should be assessed than that proposed in the preliminary resolution, or that any project should be enlarged, it shall adopt and advertise a new preliminary resolution as herein provided. (1915, c. 56, s. 6; C. S., s. 2708; 1971, c. 698, s. 1.)

§ **160A-226. Determination of costs.**—When the project is complete, the council shall ascertain the total cost. In addition to construction costs, the cost of all necessary legal services, the amount of interest paid during construction, costs of rights-of-way, and the costs of publication of notices and resolutions may be included. The determination of the council as to the total cost of any project shall be conclusive. (1915, c. 56, s. 9; C. S., s. 2711; 1971, c. 698, s. 1.)

§ **160A-227. Preliminary assessment roll; publication.** — When the total cost of a project has been determined, the council shall have a preliminary assessment roll prepared. The preliminary roll shall contain a brief description of each lot, parcel, or tract of land assessed, the basis for the assessment, the amount assessed againt each, the terms of payment, and the name of the owner of each parcel of land as far as this can be ascertained from the county tax records. A map of the project on which is shown each parcel assessed with the basis of its assessment, the amount assessed against it, and the name of the owner, as far as this can be ascertained from the county tax records, shall be a sufficient assessment roll.

After the preliminary asessment roll has been completed, it shall be filed in the city clerk's office where it shall be available for public inspection. A notice of the completion of the assessment roll, setting forth in general terms a description of the project, noting the availability of the assessment roll in the clerk's office for inspection, and stating the time and place for a hearing on the preliminary assessment roll, shall be published at least 10 days before the date set for the hearing on the preliminary assessment roll. The council shall also cause a notice of the hearing on the preliminary assessment roll to be mailed to the owners of property listed thereon at least 10 days before the hearing. The notice mailed to each property owner shall give notice of the time and place of the hearing, shall note the availability of the preliminary assessment roll for inspection in the city clerk's office and shall state the amount of the assessment against the property of the owner as shown on the preliminary assessment roll. The person designated to mail these notices shall file with the council a certificate showing they were mailed by first-class mail and on what date. Such a certificate shall be conclusive as to compliance with the mailing provisions of this section in the absence of fraud. (1915, c. 56, s. 9; C. S., s. 2712; 1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-216.

Sufficiency of Description of Land.—The assessments made upon the lands of an owner adjoining a street improved by the authorities of a city or town, will not be declared invalid on the grounds of the insufficiency of description in the assessment roll at the suit of such property owners, when in substantial compliance with the statute. Vester v. Nashville, 190 N.C. 265, 129 S.E. 593 (1925).

Map Sufficient Description. — A map made by the city engineer duly approved by the city commissioners is sufficient compliance with the requirements of the statute. Holton v. Mockville, 189 N.C. 144, 126 S.E. 326 (1925).

Notice of Filing.—Where assessments have been imposed, it is presumed that the assessment roll was filed in the office of the clerk of the municipality for inspection, and the statute gives notice that the roll was there and the amount assessed. Wake Forest v. Holding, 206 N.C. 425, 174 S.E. 296 (1934).

Failure to Publish Notice of First Hearing.—Where notice of hearing on the confirmation of an assessment roll was not published, but on the date set for the hearing the municipal board met and adopted the required resolution in amplified form, fixed the time and place for hearing of objections, and notice of the hearing on the second date set was duly published, which hearing was duly had on that date, necessary corrections made, and the assessment roll as corrected duly approved and confirmed, it was held that the fact that notice of hearing on the first date set was not published as required was rendered immaterial. Asheboro v. Miller, 220 N.C. 298, 17 S.E.2d 105 (1941).

§ **160A-228. Hearing on preliminary assessment roll; revision; confirmation; lien.**—At the public hearing, which may be adjourned from time to time until all persons have had an opportunity to be heard, the council shall hear objections to the preliminary assessment roll from all interested persons who appear. Then or thereafter, the council shall annul, modify, or confirm the assessments, in whole or in part, either by confirming the preliminary assessments against any or all of the lots or parcels described in the preliminary assessment roll, or by canceling, increasing, or reducing them as may be proper in compliance with the basis of assessment. If any property is omitted from the preliminary assessment roll, the council may place it on the roll and levy the proper assessment. Whenever the council confirms assessments for any project, the city clerk shall enter in the minutes of the council the date, hour, and minute of confirmation. From and after the time of confirmation the assessments shall be a lien on the property assessed of the same nature and to the same extent as the lien for county and city property taxes, and shall be superior to all other liens and encumbrances of whatsoever nature. After the assessment roll is confirmed, a copy of it shall be delivered to the city tax collector for collection in the same manner as property taxes, except as herein provided. (1915, c. 56, s. 9; C. S., s. 2713; 1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-216.

Assessments Constitute Liens on Property.—Assessments made upon the property of the owner for street and sidewalk improvements by a town, and in all respects under the authority conferred on the municipality by statute, extending in partial payments over a designated period of time, are to be regarded in the nature of a statutory mortgage when due and payable, and constitute liens on the property within the warranty clause against encumbrances contained in a deed, and are recoverable in the grantee's action against the grantor to the extent he has been required to pay them. Coble v. Dick, 194 N.C. 732, 140 S.E. 745 (1927).

Within Meaning of Warranty against Encumbrances.—The lien for street assessments is an encumbrance within the meaning of the warranty clause against encumbrances contained in a deed. Winston-Salem v. Powell Paving Co., 7 F. Supp. 424 (1934), citing Coble v. Dick, 194 N.C. 732, 140 S.E. 745 (1927).

Lien Amounts to Statutory Mortgage.—The lien given under this statute, when properly established, amounts to a statutory mortgage. Kinston v. Atlantic, etc., R. Co., 183 N.C. 14, 110 S.E. 645 (1922); Saluda v. Polk County, 207 N.C. 180, 176 S.E. 298 (1934).

And Is Based on Theory of Special Benefit to Property.—The lien against property for street improvements is a lien in rem against the land itself, but it is not strictly a tax lien and is based upon the theory of special benefit to the property itself. Saluda v. Polk County, 207 N.C. 180, 176 S.E. 298 (1934).

When Lien Attaches. — The lien for street assessments does not attach to land until confirmation of the assessments, and where such assessments are not confirmed by the governing body of the town until after the execution of a deed to the property, the subsequently attaching lien for the assessments does not violate the warranty and covenant in the deed, in the usual language, against encumbrances. Oliver v. Hecht, 207 N.C. 481, 177 S.E. 399 (1934).

Sufficiency of Compliance with Statute.—Where the property owner signs the petition and has notice that improvements are to be made, and notice that the assessment roll giving the amount of the assessment against his property has been filed in the office of the city clerk and accepts the benefits and pays installments of the assessments without objection, he ratifies same and the statute is sufficiently complied with. Wake Forest v. Holding, 206 N.C. 425, 174 S.E. 296 (1934).

Priority of Lien.—The amount of an assessment on the owner of land lying along a street for street improvements, is, by this statute creating a lien, superior to all other liens and encumbrances and continues, until paid, against the title of successive owners thereof. Merchants Bank, etc., Co. v. Watson, 187 N.C. 107, 121 S.E. 181 (1924).

The provision of the statute in regard to liens does not exclusively refer to subsequent liens; and the reference to the date of confirmation is only to fix the time when the lien is conclusively established, and when so established, it takes precedence over all liens then existent or otherwise. Kinston v. Atlantic, etc., R. Co., 183 N.C. 14, 110 S.E. 645 (1922).

In an action to foreclose street assessment liens it was said that if it be thought that effect should be given to the provisions relative to ad valorem taxes, that the lien for taxes levied shall attach to all the real estate of the taxpayer and shall continue until such taxes shall be paid, it may be noted that this statute, relating to local assessments provides only that the assessment when confirmed shall be a lien on the real property against which it is assessed, superior to all other liens. Raleigh v. Mechanics, etc., Bank, 223 N.C. 286, 26 S.E.2d 573 (1943).

But in Saluda v. Polk County, 207 N.C. 180, 176 S.E. 298 (1934), it was held that a lien for street assessments, while superior to the liens of mortgages or deeds of trust, is subject to the lien of the city and county for taxes for general revenue.

Same—Enforcement against Estate of Decedent.—An assessment made upon adjoining land for a street improvement by a town is a charge upon the land constituting a lien superior to all others and not enforceable against the personalty or other lands of the owner, and when the owner of land has been thus assessed, payable in installments, and he subsequently dies, it is not a debt of the deceased payable by his personal representative, but a charge against the land itself. The provisions of § 28-105, as to the order of payment of debts of the deceased, has no application. Carawan v. Barnett, 197 N.C. 511, 149 S.E. 740 (1929). See Statesville v. Jenkins, 199 N.C. 159, 154 S.E. 15 (1930); High Point v. Brown, 206 N.C. 664, 175 S.E. 169 (1934); Winston-Salem v. Powell Paving Co., 7 F. Supp. 424 (1934).

Statute of Limitations.—The assessment against abutting lands for street improvements is made a lien on the land superior to all other liens and encumbrances under this section, and the ten-year statute of limitation is applicable thereto and not the three-year statute. High Point v. Clinard, 204 N.C. 149, 167 S.E. 690 (1933).

§ **160A-229. Publication of notice of confirmation of assessment roll.**—After the expiration of 20 days from the confirmation of the assessment roll, the city tax collector shall publish once a notice that the assessment roll has been confirmed, and that assessments may be paid without interest at any time before the expiration of 30 days from the date that the notice is published, and that if they are not paid within this time, all installments thereof shall bear interest as provided in G.S. 160A-233. (1971, c. 698, s. 1.)

§ **160A-230. Appeal to General Court of Justice.**—If the owner of, or any person interested in, any lot or parcel of land against which an assessment is made is dissatisfied with the amount of the assessment, he may, within 10 days after the confirmation of the assessment roll, file a notice of appeal to the appropriate division of the General Court of Justice. He shall then have 20 days after the confirmation of the assessment roll to serve on the council or the city clerk a statement of facts upon which the appeal is based. The appeal shall be tried like other actions at law. (1915, c. 56, s. 9; C. S., s. 2714; 1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-216.

Jurisdiction of Court is Derivative.—The jurisdiction of the court upon appeal from a levy of assessments for street improvements by the governing body of a town as provided by statute is entirely derivative, and where a town has no jurisdiction to condemn land the court on appeal likewise has no jurisdiction to do so. Atlantic Coast Line R. Co. v. Ahoskie, 207 N.C. 154, 176 S.E. 264 (1934).

Right of Appeal Makes Statute Constitutional.—The right of appeal to the courts being provided in case of dissatisfaction by an owner of land abutting on a street assessed by the governing body of a municipality for street improvement, the objection that the owner's property is taken for a public use in contravention of the due process clause of the Constitution is untenable. Lake v. Wadesboro, 186 N.C. 683, 121 S.E. 12 (1923).

And Is Only Remedy of Abutting Owner.—In an action to enforce a lien for public improvements, a defendant who had notice and ample opportunity to be heard and to appeal from the order confirming the assessment roll, cannot impeach the validity of the ordinance or of the assessment for any alleged irregularities which are not jurisdictional. Asheboro v. Miller, 220 N.C. 298, 17 S.E.2d 105 (1941).

While a petition is a prerequisite, it is not jurisdictional, and if the finding by the municipal board is erroneous, it should be corrected by appeal. Asheboro v. Miller, 220 N.C. 298, 17 S.E.2d 105 (1941).

Appeal Is Not Limited to Amount of Assessment.—The statute does not limit the property owner's appeal from an assessment for public improvements solely to the amount to be charged against his land. Smith v. City of Rockingham, 268 N.C. 697, 151 S.E.2d 568 (1966).

Writ of Certiorari.—An abutting property owner who failed to appeal from a final order of the board of aldermen affirming the assessment roll was not entitled to a writ of certiorari where application for the writ was filed more than eight months after his time for appeal had expired. Sanford v. Southern Oil Co., 244 N.C. 388, 93 S.E.2d 560 (1956).

Injunctive Relief.—The remedy of abutting owners assessed for street improvements is given by the provisions for the right of appeal, and when no appeal has been taken and the work has been completed, injunctive relief against the collection of the assessments by the city will not lie. Jones v. Durham, 197 N.C. 127, 147 S.E. 824 (1929).

The owner of land abutting on a street the municipality proposes to improve has his remedy in objecting to the local assessment on his property because of the insufficiency of the petition, and he may not enjoin the issuance of bonds for this necessary expense on that ground when he has failed to pursue his statutory remedy. Brown v. Hillsboro, 185 N.C. 368, 117 S.E. 41 (1923).

Estoppel to Assert Errors in Assessments.—Where the property owner failed to object and avail himself of the specific remedy for review and correction of the assessment, but made payments on the assessment, he is estopped to show error in the assessment. Wake Forest v. Gulley, 213 N.C. 494, 196 S.E. 845 (1938).

Existence of Street May Be the Issue.—Under the provisions of this statute, it is necessary that there be an existing street in order for a valid assessment for improvements to be laid on the property of abutting owners, and this may be made an issue in an appeal under this section, and the adjoining owner may introduce his evidence to show to the contrary. Atlantic Coast Line R. Co. v. Ahoskie, 192 N.C. 258, 134 S.E. 653 (1926).

§ **160A-231. Reassessment.**—The council shall have the power, when in its judgment any irregularity, omission, error or lack of jurisdiction in any of the proceedings related thereto, has occurred, to set aside the whole of any special assessment made by it and thereupon to make a reassessment. In that case, all additional interest paid, or to be paid, as a result of the delay in confirming the assessment shall be included as a part of the project cost. The proceeding shall, as far as practicable, in all respects take place as it had with the original assessments, and the reassessment shall have the same force as if it had originally been properly made. (1915, c. 56, s. 9; C. S., s. 2715; 1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-216.

When Section Not Applicable.—Where the board of aldermen grant a petition for street improvements requesting the assessment of a larger proportion of the costs of the improvements against the lots of land abutting directly thereon than is otherwise required by statute, after the confirmation of the assessment roll a subsequent board of aldermen is without power to grant a petition of the abutting landowners for a reduction of the assessment upon the ground alone that the amount of the assessments exceeded that which they had originally anticipated, and a suit by other taxpayers of the town to enjoin the granting of such petition is proper. McClester v. China Grove, 196 N.C. 301, 145 S.E. 562 (1928).

An extension resolution providing a new series of installment payments does not invalidate the lien of a municipality for an assessment for public improvements where the sums of the new installments in the aggregate exceed the amount actually due at the time of the extension. Differences may be adjusted under the statute. Salisbury v. Arey, 224 N.C. 260, 29 S.E.2d 894 (1944).

§ **160A-232. Payment of assessments in cash or by installments.**—The owners of assessed property shall have the option, within 30 days after the publication of the notice that the assessment roll has been confirmed, of paying the assessment either in cash or in not more than 10 annual installments, as may have been determined by the council in the resolution directing the project giving rise to the assessment to be undertaken. With respect to payment by installment, the council may provide

(1) That the first installment with interest shall become due and payable on the date when property taxes are due and payable, and one subse-

quent installment and interest shall be due and payable on the same date in each successive year until the assessment is paid in full, or

(2) That the first installment with interest shall become due and payable 60 days after the date that the assessment roll is confirmed, and one subsequent installment and interest shall be due and payable on the same day of the month in each successive year until the assessment is paid in full. (1915, c. 56, s. 10; C. S., s. 2716; 1971, c. 698, s. 1.)

§ 160A-233. Enforcement of assessments; interests; foreclosure; limitations.—(a) Any portion of an assessment that is not paid within 30 days after publication of the notice that the assessment roll has been confirmed shall bear interest until paid at a rate to be fixed in the assessment resolution but not more than eight percent (8%) per annum.

(b) If any installment of an assessment is not paid on or before the due date, all of the installments remaining unpaid shall immediately become due and payable, unless the council waives acceleration. The council may waive acceleration and permit the property owner to pay all installments in arrears together with interest due thereon and the cost to the city of attempting to obtain payment. If this is done, the remaining installments shall be reinstated so that they fall due as if there had been no default. Waiver of acceleration and reinstatement of future installments may be done at any time before foreclosure proceedings have been instituted.

(c) Assessment liens may be foreclosed under any procedure prescribed by law for the foreclosure of property tax liens, except that lien sales and lien sale certificates shall not be required, and foreclosure may be begun at any time after 30 days after the due date. The city shall not be entitled to a deficiency judgment in an action to foreclose an assessment lien. The lien of special assessments shall be inferior to all prior and subsequent liens for State, local, and federal taxes, and superior to all other liens.

(d) No city may maintain an action or proceeding to enforce any remedy for the foreclosure of special assessment liens unless the action or proceeding is begun within 10 years from the date that the assessment or the earliest installment thereof included in the action or proceeding became due. Acceleration of installments under subsection (b) shall not have the effect of shortening the time within which foreclosure may be begun, but in that event the statute of limitations shall continue to run as to each installment as if acceleration had not occurred. (1915, c. 56, s. 11; C. S., s. 2717; 1923, c. 87; 1929, c. 331, s. 1; 1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-216.

Effect of Option to Pay in Installments.—The provisions giving the property owner 30 days in which to pay assessments for local improvements, in cash without interest, or the election to pay the same in installments, are for the benefit of the property owner and, when exercised, become mandatory upon the municipality; but, when the property owner remains silent and neither pays in cash nor elects to pay in installments, the option passes to the municipality to foreclose or to collect in installments. Salisbury v. Arey, 224 N.C. 260, 29 S.E.2d 894 (1944).

Right to Declare All Installments Due.—The provision of this section, that upon failure to pay any installment when due, all installments remaining unpaid should at once become due and payable, gives the municipality the optional right to declare all installments due and payable upon default, and in the absence of its declaration to invoke the acceleration provision the statute of limitations will not begin to run against unpaid installments not then due. Farmville v. Paylor, 208 N.C. 106, 179 S.E. 459 (1935). See Salisbury v. Arey, 224 N.C. 260, 29 S.E.2d 894 (1944).

Judgments for Installments.—Where the owner of land abutting on the street has refused to pay the assessments lawfully made on him for street improvements, a judgment allowing him to pay by installments may be entered. Durham v. Durham Public Service Co., 182 N.C. 333, 109 S.E. 40 (1921).

Interest Rate is Prescribed.—The interest rate on street assessments is fixed by statute, and the courts are without authority at law or in equity to prescribe a lesser interest rate. Zebulon v. Dawson, 216 N.C. 520, 5 S.E.2d 535 (1939).

Lien Enforced by Decree of Sale.—See Kinston v. Atlantic, etc., R. Co., 183 N.C.

14, 110 S.E. 645 (1922); Saluda v. Polk County, 207 N.C. 180, 176 S.E. 298 (1934).

Limitation of Actions. — In a suit to foreclose a statutory lien on abutting property, given a city for street improvements, all installments of the amounts assessed therefor which are 10 years overdue when action is brought are barred, and no part of the proceeds of sale can be applied to the payment of such installments. Raleigh v. Mechanics, etc., Bank, 223 N.C. 286, 26 S.E.2d 573 (1943).

In this section the municipalities are expressly named in the statute of limitations. Therefore, an action to enforce the lien for public improvements, even though instituted under other provisions, is barred after 10 years from default in the payment of the assessments, or, if the assessments are payable in installments, each installment is barred after 10 years from default in payment of the same unless the time of payment has been extended as provided by law. Charlotte v. Kavanaugh, 221 N.C. 259, 20 S.E.2d 97 (1942).

§ **160A-234. Assessments on property held by tenancy for life or years.**—(a) Assessments upon real property in the possession or enjoyment of a tenant for life, or a tenant for a term of years, shall be paid pro rata by the tenant and the remaindermen after the life estate, or the owner in fee after the expiration of the tenancy for years according to their respective interests in the land calculated as provided in G.S. 37-13.

(b) If any person having an interest in land held by tenancy for life or years shall pay more than his pro rata share of any assessment against the property, he shall have the right to maintain an action in the nature of a suit for contribution against the delinquent party to recover from him his pro rata share of the assessment, with interest thereon from the date of payment, and shall be subrogated to the right of the city to a lien on the property for the same. (1911, c. 7, ss. 1, 2, 3; C. S., ss. 2718, 2719, 2720; 1971, c. 698, s. 1.)

Assessments Not Preference against Estate of Deceased Life Tenant. — Since street and sidewalk assessments constitute a lien against the property not collectible out of other properties belonging to the owner, and since a life tenant is not liable for the whole assessment, being entitled to have it proportioned, upon the death of a life tenant such assessments made prior to his death do not constitute a preference against his estate payable in the third class of priority as a tax assessed on the estate prior to his death. Rigsbee v. Brogden, 209 N.C. 510, 184 S.E. 24 (1936) (decided under former similar provisions).

§ **160A-235. Lien in favor of a cotenant or joint owner paying special assessments.**—Any one of several tenants in common, or joint tenants, or copartners shall have the right to pay the whole or any part of any special assessment levied against property held jointly or in common, and all sums by him so paid in excess of his share of the assessment, interests, costs, and amounts required for redemption, shall constitute a lien upon the shares of his cotenants or associates, which he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding. The lien herein provided for shall not be effective against an innocent purchaser for value unless and until notice thereof is filed in the office of the clerk of superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in the clerk's office. (1935, c. 174; 1971, c. 698, s. 1.)

§ **160A-236. Apportionment of assessments.**—When special assessments are made against property which has been or is about to be subdivided, the council may, with the consent of the owner of the property, apportion the assessment among the lots or tracts within the subdivision, or release certain lots or tracts from the assessments if, in the opinion of the council, some of the lots or tracts in the subdivision are not benefited by the project. Upon an apportionment, each of the lots and tracts in the subdivision shall be released from the lien of the original assessment, and the portions of the original assessment assessed against each lot or tract shall have the same force and effect as the original assessment as to the particular lot or tract assessed. At the time of making an apportionment under this section, the council shall enter on its minutes a statement to the effect that the apportionment is made with the consent of the owners of the property affected, and this entry shall be conclusive in the absence of fraud. Reassessments made under this section may include past due installments of principal and interest as well as installments not then due, and any installments not then due shall fall due at the same dates as they would have under the original assessment. The council may delegate authority to make apportionment of assessments to the chief financial officer, but apportionments shall in all cases be reported to the council at its next regular meeting and entered in the minutes. (1929, c. 331, s. 1; 1935, c. 125; 1971 c. 698, s. 1.)

§§ **160A-237 to 160A-239:** Reserved for future codification purposes.

ARTICLE 11.

Eminent Domain.

§ **160A-240. Definitions.**—As used in this Article, the following words and phrases have the meanings indicated unless the context clearly requires another meaning:

(1) "Condemnation" means the procedure prescribed by law for exercising the power of eminent domain.

(2) "Eminent domain" means the power to divest title from the owner of property and vest it in the possessor of the power against the will of the owner upon the payment of just compensation for the right, title, and interest divested.

(3) "Owner" includes the plural when appropriate and means any person holding a vested estate of inheritance in the property, a tenant for life or for years, tenants by the entirety, the holder of the equity of redemption under a mortgage, and the grantor and third-party beneficiary under a deed of trust. Unless otherwise provided, "owner" does not include persons holding liens, judgments, options, or any other encumbrances of record on the title to the property, or persons holding unvested future interests in the property.

(4) "Person" includes the plural when appropriate and means a natural person, association, partnership, corporation, the State of North Carolina, the United States of America, a body politic and corporate, and any other legal entity capable of owning or having any interest in property under the laws of North Carolina.

(5) "Property" means any right, title, or interest in land, including leases and options to buy or sell. "Property" also includes rights of access, rights-of-way, easements, water rights, air rights, and any other privilege or appurtenance in or to the possession, use, and enjoyment of land. (1971, c. 698, s. 1.)

§ **160A-241. Power of eminent domain conferred.** — In addition to powers conferred by any other general law, charter, or local act, each city shall possess the power of eminent domain and may acquire by purchase or condemnation any property necessary or useful for the following purposes:

(1) Opening, widening, extending, or improving streets, alleys, sidewalks, and public wharves.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311.

(3) Establishing or enlarging parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works.

(5) Establishing, enlarging, or improving cemeteries.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, and other buildings for use by any city department.

The power to acquire property by condemnation shall not depend on any prior effort to acquire the same property by grant or purchase, nor shall the power to negotiate for the grant or purchase of property be impaired by initiation of condemnation proceedings for acquisition of the same property.

In exercising the power of eminent domain, a city may in its discretion use the procedures of Article 2 of Chapter 40 of the General Statutes, or the procedures of this Article, or the procedures of any other general law, charter, or local act applicable to the city. (1917, c. 136, sub-ch. 4, s. 1; 1919, c. 262; C. S., ss. 2791, 2792; 1923, c. 181; 1961, c. 982; 1971, c. 698, s. 1.)

Editor's note.—The cases cited in the following note were decided under former similar provisions.

Power Discretionary.—Where it appears that the governing authorities of a town have taken lands to widen a street intersecting with other streets so as to lessen the danger to traffic thereon, and it is made to appear that doing so was a reasonable exercise of the discretion vested in them, the findings that such course was unnecessary is not binding on the Supreme Court, the question being, primarily, whether the administrative authorities of the town have so grossly and manifestly abused the exercise of their discretionary powers as to render their action ineffectual. Lee v. Waynesville, 184 N.C. 565, 115 S.E. 51 (1922).

Not Limited by § 40-10.—The power granted to a municipality to condemn land for street and other purposes is not limited or restricted by § 40-10, prohibiting condemnation of dwelling houses and burial grounds. Mount Olive v. Cowan, 235 N.C. 259, 69 S.E.2d 525 (1952). See Raleigh v. Edwards, 235 N.C. 671, 71 S.E.2d 396 (1952).

The governing body of a municipality, for the purpose of erecting an elevated water storage tank as an addition to its water system, has the power, in the exercise of a sound discretion, to acquire by condemnation, if need be, dwelling-house properties either within or outside the city, and this is so irrespective of the provisions of § 40-10 and the related statute, § 40-2(2). Raleigh v. Edwards, 235 N.C. 671, 71 S.E.2d 396 (1952).

The opening and closing of streets is a governmental function. Bessemer Improvement Co. v. Greensboro, 247 N.C. 549, 101 S.E.2d 336 (1958).

Improvements No Bar to Condemnation.—The governing authorities of a town are not estopped to condemn land for the widening or improvement of its streets by reason of an owner having put extensive improvements on his land a long time prior to the time it was condemned for that purpose, the power of condemnation, in cases of this character, being a continuing one to be exercised when and to the extent that the public good may require it. Lee v. Waynesville, 184 N.C. 565, 115 S.E. 51 (1922).

Acquisition of Easement by Payment of Permanent Damages.—Where plaintiff landowners demand permanent damages in their action against a municipality for trespass based upon the construction by the municipality of a storm sewer line over their lands, and defendant municipality prays for an easement for the purpose of maintaining such drainage system, under the verdict and judgment awarding permanent damages the municipality, upon payment of the damages awarded, acquires a permanent easement to maintain its storm sewer line so long as it is kept in proper repair. McLean v. Mooresville, 237 N.C. 498, 75 S.E.2d 327 (1953).

Agreement to Furnish Fire Protection as Compensation.—A municipality has the authority to compensate landowners for a water and sewer line easement across a tract of land located outside the municipal limits by an agreement to furnish fire protection for any buildings located on such tract. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970).

Does Not Constitute Waiver of Governmental Immunity.—An agreement by a municipality to furnish fire protection for property lying outside the municipality as compensation for a water line and sewer easement across such property does not constitute a waiver of the municipality's governmental immunity with respect to torts committed in the maintenance or operation of its fire department. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970).

And Profit Does Not Make Such Furnishing a Proprietary Function.—The fact that a water and sewer easement obtained by a municipality in exchange for its promise to furnish fire protection permitted the municipality to sell water at a profit does not make the furnishing of such fire protection a proprietary rather than a governmental function. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970).

Right of Condemnor to Claim Part of Award. — When a town sought to have property valued free of any claims which it could assert, the town could not, after the value had been fixed, claim any part of the award. Town of Hertford v. Harris, 263 N.C. 776, 140 S.E.2d 420 (1965).

City Must Allege and Prove Compliance with Procedural Requirements.—When a city undertakes to exercise the power of eminent domain which has been granted to it by the legislature, it is necessary that it both allege and prove compliance with statutory procedural requirements. City of Charlotte v. McNeely, 8 N.C. App. 649, 174 S.E.2d 348 (1970).

§ 160A-242. Acquisition of whole parcel or building.—(a) When the proposed right-of-way of a street or highway requires condemnation of only a portion of a parcel of land leaving a remainder of such shape, size or condition that it is of little value, a city may acquire the entire parcel by purchase or condemnation. If the remainder is to be included in the land described in the preliminary and final condemnation resolutions, the resolutions shall include:

(1) A determination by the council that a partial taking of the land would substantially destroy the economic value or utility of the remainder, or

(2) A determination by the council that an economy in the expenditure of public funds will be promoted by taking the entire parcel, or

(3) A determination by the council that the interest of the public will be best served by acquiring the entire parcel.

(b) Residues acquired under this section may be sold or disposed of in the manner provided for the disposition of city property, or may be exchanged for other property needed by the city.

(c) When the proposed right-of-way of a street or highway requires condemnation of a portion of a building or other structure, the city may acquire the entire building or structure by purchase or condemnation, together with the right to enter upon the surrounding land for the purpose of removing the building or structure. If the entire building is to be included in the property described in the preliminary and final condemnation resolutions, the resolutions shall include a determination by the city council either

(1) That an economy in the expenditure of public funds will be promoted by acquiring the entire building or structure; or

(2) That it is not feasible to cut off a portion of the building or structure without destroying the whole; or

(3) That the convenience, safety, or improvement of the street or highway will be promoted by acquiring the entire building or structure.

Nothing in this section shall be deemed to compel the city to condemn the underlying fee of the portion of any building or structure that lies outside the right-of-way of any existing or proposed street or highway. (1969, c. 601; 1971, c. 698, s. 1.)

§ 160A-243. Limitations upon power of eminent domain. — (a) A city shall not possess the power of eminent domain with respect to property owned by the State of North Carolina unless the State consents to the taking. The State's consent shall be given by the Council of State, or by the Director of Administration if the Council of State delegates this authority to him. In a condemnation proceeding against State property consented to by the State, the only issue shall be the compensation to be paid for the property by the city. Therefore, the preliminary condemnation resolution shall not be required, but all other procedures prescribed by this Article shall be followed.

(b) A city shall possess the power of eminent domain with respect to property owned by a county, another city, or a municipal corporation organized for a special purpose only if the property proposed to be taken is not being used or is not needed for any governmental or proprietary purpose.

(c) A city shall possess the power of eminent domain for the purpose of acquiring the fee or any lesser interest in properties already devoted to the public use and owned by a public service corporation, including public utilities as defined in Chapter 62 of the General Statutes and electric and telephone membership corporations, only if such acquisition will not prevent or unreasonably impair the continued devotion to the public use of such properties and their operation by such public service corporation. (1971, c. 698, s. 1.)

Land Owned by Railroad Company.—A municipal corporation had power, under its charter and the general powers of eminent domain conferred upon it by statute, to condemn for necessary street purposes a strip of land owned by a railroad company when such property was not being used by the railroad company and was not necessary nor essential to the operation of its business. Goldsboro v. Atlantic Coast Line R. Co., 246 N.C. 101, 97 S.E.2d 486 (1957) (decided under former § 160-205).

§ **160A-243.1. Remnants in condemnations.**—The court having jurisdiction of an action instituted by a city or an agency, board or commission of a city to acquire any interest in real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable cost, disbursements, and expenses, including reasonable attorney fees, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if the final judgment in the action is that the city or agency, board or commission of a city cannot acquire such real property or interest therein by condemnation, or if the proceeding is abandoned by the city, agency, board or commission of a city.

The judge rendering a judgment for the plaintiff in a proceeding brought under Chapter 40 of the General Statutes awarding compensation for the taking of property by a city or an agency, board or commission of a city shall determine and award or allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the court reimburse such plaintiff for his reasonable cost, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

A city or agency, board or commission of a city may offer to acquire the entire tract or parcel of an owner where the acquisition of only a part thereof would leave the owner with an uneconomic remnant. (1971, c. 896, s. 13; c. 1137.)

Editor's Note.—This section was originally codified as § 160-205.2. It was transferred to its present position by Session Laws 1971, c. 896, s. 13, effective Jan. 1, 1972.

§ **160A-244. Fee simple title acquired.** — Unless otherwise expressly provided in the preliminary and final condemnation resolutions, condemnation shall vest in the city an estate in fee simple absolute to the property acquired. (1971, c. 698, s. 1.)

§ **160A-245. Rules of Civil Procedure applicable.**—All notices required to be served by this Article shall be served in the manner prescribed for service of summons in a civil action by Rule 4(k) of the Rules of Civil Procedure (G.S. 1A-1). Appointment of and service of notice on guardians ad litem shall be done in the manner prescribed by Rule 17 of the Rules of Civil Procedure (G.S. 1A-1). In all other respects, the procedure to be followed in exercise of the power of eminent domain by a city shall be that prescribed in this Article supplemented when necessary or appropriate by the procedures prescribed by the Rules of Civil Procedure in general and in particular by those portions of the Rules of Civil Procedure governing proceedings in which jurisdiction is derived primarily from the presence of property in the State of North Carolina. (1971, c. 698, s. 1.)

§ 160A-246. Preliminary condemnation resolution.—(a) Condemnation shall begin with the city council's adoption of a preliminary condemnation resolution containing substantially the following:

(1) A description of each lot, tract, parcel of land, or body of water in which property rights are to be acquired;

(2) The nature of the right, title, or interest to be acquired in the property, including a description of the location of any easement or other right in property that can be located on the ground, but is less than an estate in fee;

(3) A statement of the purpose for which the property is to be acquired;

(4) A statement as to whether the owner will be permitted to remove all or a specified portion of any buildings, structures, permanent improvements, or fixtures situated on or affixed to the property;

(5) The name and address of the owner of the property and all other persons known to have an interest in the property, including the holders of vested or contingent future interests, the holders of liens, options, judgments, or other encumbrances on the title to the property; the holder of the equity of redemption under a mortgage; and the grantor and third-party beneficiary under a deed of trust. Persons known to have an interest in the property but whose names or addresses cannot be ascertained with reasonable diligence and expense may be named as "unknown persons" or addressed as "address unknown." A person's interest in property shall be deemed known if it appears of record, or could or would be discovered by the exercise of reasonable diligence and expense.

(6) A statement and notice as to the composition, method of selection, time and place of first meeting, and general duties of the board of appraisers;

(7) The name of the member of the board of appraisers appointed by the city.

(b) Unless the preliminary condemnation resolution specifically provides otherwise, the description of a parcel of land and the statement of intention to acquire title to it in fee simple absolute shall be deemed to include all buildings, structures, permanent improvements, and fixtures situated on or affixed to the land, and all privileges, appurtenances, and other property rights running with the land.

(c) The preliminary condemnation resolution shall initiate condemnation against all property described and all parties named therein. It shall not be necessary to initiate separate proceedings against each individual lot, tract, or parcel of land or each individual owner, but the resolution shall be limited to condemnation for a single project or purpose, and to property under common ownership. (1971, c. 698, s. 1.)

§ 160A-247. Preliminary condemnation resolution served on owners.—A copy of the preliminary condemnation resolution shall be served on all persons named as owners or parties therein. (1971, c. 698, s. 1.)

§ 160A-248. Board of appraisers. — (a) The property described in the preliminary condemnation resolution shall be appraised by a board of appraisers composed of one person appointed by the city (who shall be named in the preliminary condemnation resolution), one person appointed by the owner, and one person appointed jointly by the other two appraisers. Each appraiser shall be a freeholder of the city who has no right, title, or interest in or to the property being condemned, is not related by blood or marriage to any of the owners, is not an officer, employee, or agent of the city, and is disinterested in the rights of the parties in every way. Either the city or the owner may reject an appraiser appointed by the other or by the city's and owner's appraiser if the person so appointed is not disinterested. Notice of rejection of an appraiser shall be given within 48 hours of his appointment or else the right to object shall be deemed to have been waived. If an appointment is rejected, the city or owner shall immediately appoint another appraiser and shall give notice of this action to the other parties.

(b) The owner's appraiser shall be appointed and his name reported to the city clerk within 15 days after the resolution has been served on all owners. If there is more than one owner, the appointment shall be made by those having a majority in interest in the property. For purposes of appointing an appraiser, the holders of future interests whether vested or contingent, the holder of the equity of redemption under a mortgage, and the grantor and third-party beneficiary under a deed of trust shall not be considered owners.

(c) If the owner fails to appoint an appraiser within the time allowed, or if the owner's appraiser and the city's appraiser fail to agree upon appointment of the third appraiser, the city may apply to the clerk of superior court of the county in which the land lies for appointment of either an appraiser to represent the owner or the third appraiser, as appropriate.

(d) Each appraiser shall take an oath or affirmation that he will fairly and impartially discharge his duties as an appraiser. (1971, c. 698, s. 1.)

§ **160A-249. Meetings of board of appraisers.**—(a) The first meeting of the board of appraisers shall be convened at or near the site of the property being condemned at the time fixed by the preliminary condemnation resolution. The board of appraisers shall first view the property to be acquired and then hear any evidence presented by the owner or the city as to the damages and benefits that will result from the proposed condemnation. The evidence need not be reduced to writing unless one of the parties demands a hearing on the record, in which event he shall bear the cost of the transcript. The hearing of evidence need not be held at the site of the property if this is not convenient, and the appraisers may retire to some suitable place immediately after viewing the property.

(b) If for any reason the first meeting of the board of appraisers cannot be held at the time fixed in the preliminary condemnation resolution or at the site of the property being condemned, the appraisers may fix another time or place and shall serve notice of the change in time or place upon each person upon whom the preliminary condemnation was served. Notice changing the time and place of the first meeting shall be served not later than five days before the date of the meeting.

(c) The board of appraisers may adjourn the first meeting to any other time or place to hear additional evidence, or it may hold additional meetings. No notice need be given of an adjourned meeting if the time and place of the adjourned meeting were fixed before the close of the first or the adjourned meeting. Notice of additional meetings shall be given as provided for a change in the time or place of the first meeting if they are to be held to hear evidence, but not otherwise. (1971, c. 698, s. 1.)

§ **160A-250. Report of board of appraisers.**—(a) The board of appraisers shall determine the compensation to be paid to the owner by the city for its acquisition of the property. In determining the compensation, the appraisers shall take into consideration both the loss or damage that will result to the owner from the acquisition and any benefits that will inure to any remainder of the property from the improvement or project for which the property is being condemned. Benefits shall include both benefits or advantages special to the property and benefits or advantages to the property in common with other property affected by the improvement or project. If the owner is to be allowed to remove any building or other permanent improvement or fixtures from the property, the value thereof shall not be included in the compensation award, but the cost of removal shall be considered as an element of damages.

(b) When it has determined damages and benefits, the board of appraisers shall make its report to the city council. The board shall report within 30 days of its appointment, unless the council allows a longer time. The report shall show separately the amount of damage, the amount of benefits, and the amount of compensation to be paid to the owner. The report shall be sufficient if it is concurred in by two of the three appraisers. If no two of the appraisers can agree upon a report, or if the board fails to report within the time allowed, a new board of appraisers may be appointed in the same manner as the original board and shall follow the same procedure required of the original board. (1971, c. 698, s. 1.)

§ **160A-251. Council action on report.** — Within 30 days after the board of appraisers' report is submitted to the council, the council shall decide what action it will take thereon. If the council decides to abandon the condemnation, it shall adopt a resolution to that effect. Failure of the city to take any action within 80 days after the report has been submitted shall be deemed an abandonment of the condemnation. Abandonment of condemnation shall not preclude the city from thereafter instituting another proceeding to acquire the property included in the abandoned proceedings. (1971, c. 698, s. 1.)

§ **160A-252. Final resolution of condemnation.**—If the council decides to proceed with the condemnation and acquire the property described in the preliminary condemnation resolution after considering the report of the board of appraisers, it shall adopt a final condemnation resolution containing substantially the following provisions:

(1) A recital that a board of appraisers has been appointed to determine the compensation to be paid for the property acquired and that the appraisers have submitted their report to the council;
(2) A statement of the amount of damages and benefits and the amount of compensation to be paid to the owner as fixed by the board of appraisers;
(3) A statement that the city hereby acquires the property described herein under the power of eminent domain;
(4) A description of each lot, tract, or parcel of land or body of water in which property rights are acquired and the nature and extent of the estate or rights acquired in each, including a description of the location of any easement, right-of-way, or right of access acquired;
(5) A statement of the purpose for which the property is acquired;
(6) The names of the owner and all other persons made a party to the proceeding;
(7) The determination of the council as to the time when the city will take possession of the property or begin to exercise the property rights acquired, and a direction that the premises be vacated or control over the rights acquired relinquished by such time;
(8) If the owner is allowed to remove any building or portion thereof or any permanent improvements or fixtures from the property, a direction that these buildings, improvements, or fixtures be removed before the date fixed for possession or control together with notice of the city's right to remove them and the lien therefor provided by G.S. 160A-260;
(9) A statement that the owner has 45 days within which to give notice of appeal to the General Court of Justice. (1971, c. 698, s. 1.)

§ **160A-253. Service of final resolution of condemnation.**—A copy of the final condemnation resolution shall be served upon each person named therein by registered mail to his last known address. Service on persons whose name or address is unknown shall be by publication in the manner prescribed by Rule 4(j)(9)a of the Rules of Civil Procedure. Personal service of the final condemnation resolution shall not be required. (1971, c. 698, s. 1.)

Editor's Note.—The Rules of Civil Procedure are found in § 1A-1.

§ **160A-254. Vesting of title in city.**—Title to the property being acquired shall vest in the city as between the city and the owners and other parties named in the final condemnation resolution on the date specified in the resolution, or if no date is specified on the date the final condemnation resolution is adopted. The resolution shall have the effect of a judgment against the city for the amount of compensation fixed by the board of appraisers. Title shall not vest in the city as to persons not named in the final condemnation resolution until it has been recorded and indexed in the office of the register of deeds of the county in which the property or any portion thereof is located. The city shall not be entitled to possession of the property until the owners have been paid in full or a deposit of award has been made in accordance with G.S. 160A-258. If there is any dispute or doubt as to who is entitled to receive the compensation, and the owners have not appealed, the city may deposit the compensation with the clerk of superior court and upon making the deposit shall be entitled to immediate possession of the property. (1971, c. 698, s. 1.)

§ **160A-255. Appeal to General Court of Justice.**—Any party to a condemnation proceeding, including the city, may appeal the proceeding to the appropriate division of the General Court of Justice, but the city may appeal only as to the issue of compensation. Notice of appeal shall be given within 10 days from the date that the final resolution of condemnation is adopted, and shall be served on all parties to the proceeding by registered mail to their last known address. An appeal shall not delay the vesting in the city of title to the property or hinder the city in any way from proceeding with the project or improvement for which the property was acquired, except that if the appeal is by a party described in G.S. 160A-243(b) or (c), vesting of title in the city shall be suspended until the court has rendered final judgment on the power of the city to acquire the property and the amount of compensation to be paid. In an appeal by a party described in G.S. 160A-243(b), the court may, in its discretion, reduce the amount of property that may be acquired by the city. (1971, c. 698, s. 1.)

§ **160A-256. Record on appeal.**—Upon an appeal the city clerk shall certify copies of all records in the condemnation proceeding to the appropriate division of the General Court of Justice. The appeal shall be tried like other actions at law. The record on appeal shall consist of the preliminary condemnation resolution, the proofs of service of all notices required to be served, the oaths of the members of the board of appraisers, the report of the board of appraisers, the transcript of testimony before the board of appraisers, if any; the final condemnation resolution; and the notice of appeal. The record on appeal, or any portion thereof, shall be competent as evidence in the trial of an appeal. The trial of the issue of damages upon an appeal shall be de novo. (1971, c. 698, s. 1.)

§ **160A-257. Registration of condemnation proceedings.**—A copy of the final condemnation resolution, and any judgment modifying any portion thereof as to the nature and extent of the property acquired, shall be certified by the city clerk, and recorded in the office of the register of deeds of the county in which the property is located. (1971, c. 698, s. 1.)

§ **160A-258. Deposit of award.**—At any time following an appeal, the city may deposit with the clerk of superior court a sum of money equal to the compensation determined by the board of appraisers if the appealing party is the owner, or a sum estimated by the city to be just compensation for the taking if the city is an appealing party. The owners may apply to the clerk for disbursement of the money deposited in court, or any portion thereof, as full compensation, or as a credit against just compensation without prejudice to further proceedings in the cause. Upon such application, the clerk shall order that the money deposited be paid to the persons entitled thereto in accordance with the application. The clerk shall have power to make such orders with respect to encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable. (1971, c. 698, s. 1.)

§ **160A-259. Interest on award.**—The amount awarded as damages by judgment of the General Court of Justice shall include interest at six percent (6%)

per annum on the award from the date of taking to the date of judgment unless a deposit of award has been made. Interest on a court award shall not be allowed from the date of a deposit of award as provided by G.S. 160A-258 on whatever portion thereof has been paid into court as provided in that section. (1971, c. 698, s. 1.)

§ 160A-260. Removal of structures on condemned land; lien.—The city may allow the owner of property acquired by condemnation to remove any building, permanent improvement, or fixture wholly or partially located on or affixed to the property, and may specify a time after adoption of the final condemnation resolution within which it may be removed. If the report of the board of appraisers deducted the value of any such property to be removed from the award of compensation and allowed the cost of removal as an element of damages and the owner fails to remove it within the time allowed, the city may remove it and the cost of the removal and storage of the property shall be chargeable against the owner and a lien upon any remainder of the property not acquired by the city, to be recovered or foreclosed in the manner provided by law for recovery of debt or foreclosure of mortgages. (1971, c. 698, s. 1.)

§ 160A-261. Sale or other disposition of land condemned.—When any land condemned in fee by the city is no longer needed for the purpose for which it was condemned, it may be used for any other public purpose or may be sold or disposed of in the manner prescribed by law for the sale and disposition of surplus property. (1971, c. 698, s. 1.)

§ 160A-262. Article supplementary to other laws.—This Article is supplementary to any other laws, whether general or local, conferring the power of eminent domain and prescribing a procedure for the exercise thereof, and shall not be construed to repeal or amend any portion of any such laws. (1971, c. 698, s. 1.)

§§ 160A-263 to 160A-265: Reserved for future codification purposes.

ARTICLE 12.

Sale and Disposition of Property.

§ 160A-266. Methods of sale; limitation.—(a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of any real or personal property belonging to the city by:

(1) Private negotiation and sale;
(2) Advertisement for sealed bids;
(3) Negotiated offer, advertisement, and upset bid; or
(4) Public auction.

(b) Private negotiation and sale may be used only (i) with respect to personal property valued at less than five thousand dollars ($5,000) for any one item or group of similar items, or (ii) with respect to the exchange of facilities of a city-owned enterprise for like facilities located within or outside the corporate limits. Real property and personal property valued at five thousand dollars ($5,000) or more for any one item or group of similar items may be sold by any method permitted by this Article other than private negotiation and sale, or may be exchanged as permitted by this subsection. (1971, c. 698, s. 1.)

Editor's Note.—The cases and opinion of the Attorney General cited in the following note were decided or issued prior to the enactment of this Article.

Opinions of Attorney General. — Mr. Kyle Hayes, North Wilkesboro Town Attorney, 9/10/69.

Real Estate Agent May Be Employed.—As incidental to the power of a municipal corporation to sell at public auction parcels of land acquired by it by foreclosure of tax and street assessment liens, the municipality has the authority, in the exercise of its discretion in determining the means for accomplishing this purpose, to employ a real estate agent upon commission to obtain a responsible bidder at the sale to bid a sum sufficient to protect the municipality's interest. Cody Realty, etc., Co. v. Winston-Salem, 216 N.C. 726, 6 S.E.2d 501 (1940).

What Real Estate May Be Sold.—In Southport v. Stanly, 125 N.C. 464, 34 S.E. 641 (1899), the court says: The reasonable construction of the statute must be that the town or city authorities can sell any personal property, or sell or lease any real estate which belongs to a town or city, as the surplus of the original acreage ceded for the town or city site, or such land as may have been subsequently acquired or purchased. But in no case can the power be extended to the sale or lease of any real estate which is to be held in trust for the use of the town, or any real estate which is devoted to the purpose of government. To enable the town to sell such real estate there must be a special act of the General Assembly authorizing such sale or lease. Brockenbrough v. Board, 134 N.C. 1, 46 S.E. 28 (1903).

In Moose v. Carson, 104 N.C. 431, 10 S.E. 689 (1889), it was held that when a city conveys land bounded by an established street, and the grantee enters upon and improves the land, a subsequent conveyance by the corporation of the land covered by the street, whereby the easement of the appurtenant owner is interfered with, is void. But where there have been no improvements made on a dedicated street and the dedicated land has never been used as a street, a city by an act of legislature conferring authority may sell and convey the land so dedicated to it for street purposes. Church v. Dula, 148 N.C. 262, 61 S.E. 639 (1908).

Sale of Swimming Pool to Avoid Operating on Integrated Basis.—Where a municipality sought to sell public swimming pools under the provisions of this section and other legislative authority, the contention that there was a denial of equal rights where the purpose of the closing or sale was to avoid the necessity of operating the facilities on a racially integrated basis was not sustained. If the swimming pools were disposed of through a bona fide public sale, and there was no evidence to the contrary in the instant case, there could be no unequal treatment and, therefore, no racial discrimination. Tonkins v. Greensboro, 162 F. Supp. 549 (1958).

A contract for removal of sludge from city's sewerage disposal plant was held to relate to a service and not a sale of city property within the meaning of the statute requiring sale of city property to be made by auction. Plant Food Co. v. Charlotte, 214 N.C. 518, 199 S.E. 712 (1938).

§ 160A-267. Private sale.—When the council proposes to dispose of property by private sale, it shall at a regular council meeting adopt a resolution or order authorizing an appropriate city official to dispose of the property by private sale at a negotiated price. The resolution or order shall identify the property to be sold and may, but need not, specify a minimum price. The resolution or order shall be published once after its adoption, and no sale shall be consummated thereunder until 10 days after its publication. (1971, c. 698, s. 1.)

§ 160A-268. Advertisement for sealed bids.—The sale of property by advertisement for sealed bids shall be done in the manner prescribed by law for the purchase of property, except that in the case of real property the advertisement for bids shall be begun not less than 30 days before the date fixed for opening bids. (1971, c. 698, s. 1.)

§ 160A-269. Negotiated offer, advertisement, and upset bids.—A city may receive, solicit, or negotiate an offer to purchase property and advertise it for upset bids. When an offer is made and the council proposes to accept it, the council shall require the offeror to deposit five percent (5%) of his bid with the city clerk, and shall publish a notice of the offer. The notice shall contain a general description of the property, the amount and terms of the offer, and a notice that within 10 days any person may raise the bid by not less than ten percent (10%) of the first one thousand dollars ($1,000) and five percent (5%) of the remainder. When a bid is raised, the bidder shall deposit with the city clerk five percent (5%) of the increased bid, and the clerk shall readvertise the offer at the increased bid. This procedure shall be repeated until no further qualifying upset bids are received, at which time the council may accept the offer and sell the property to the highest bidder for cash. The council may at any time reject any and all offers. (1971, c. 698, s. 1.)

§ **160A-270. Public auction.**—When it is proposed to sell real or personal property by public auction, the council shall first adopt a resolution authorizing the sale, describing the property to be sold, specifying the date, time, place, and terms of sale, and stating that any offer or bid must be accepted and confirmed by the council before the sale will be effective. The resolution may, but need not, require that the highest bidder at the sale make a bid deposit in an amount specified in the resolution. The council shall then publish a notice of the sale once 30 days before the sale. The notice shall contain a general description of the land sufficient to identify it, the terms of the sale, and a reference to the authorizing resolution. After bids have been received, the highest bid shall be reported to the council, and the council shall accept or reject it within 30 days thereafter. If the bid is rejected, the council may readvertise the property for sale. (1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former similar provisions.

Notice of Partition of Land Is Not Required.—The requirement of public notice has no application to actual partition of land in which a municipality owns an interest. Actual partition between tenants in common involves no sale or disposal of land or any interest therein. Craven County v. First-Citizens Bank & Trust Co., 237 N.C. 502, 75 S.E.2d 620 (1953).

Effect of Noncompliance with Requirements as to Notice.—If the publication of notice fails to comply in substance with the law, especially as to the time of publication, a purchaser does not acquire a marketable title. Bagwell v. Town of Brevard, 267 N.C. 604, 148 S.E.2d 635 (1966).

Advertisement Held Not to Relate Back to Prior Publication of Notice. — An advertisement for the sale of municipal property on a date less than 30 days after the first publication of the notice cannot relate back to a prior publication of notice, even though the prior notice related to substantially the same land, when the prior notice stipulates a different date for the sale and contains material differences in the terms of payment, as well as a discrepancy in the quantity of land to be sold and whether the land would be offered for sale as a whole or in separate tracts; therefore, the purported sale on the date specified in the second advertisement is a nullity. Bagwell v. Town of Brevard, 267 N.C. 604, 148 S.E.2d 635 (1966).

§ **160A-271. Exchange of property.**—A city may exchange any real property belonging to the city for other real property by private negotiation if the city receives a full and fair consideration in exchange for its property. Property shall be exchanged only pursuant to a resolution authorizing the exchange adopted at a regular meeting of the council upon 10 days' public notice. Notice shall be given by publication describing the properties to be exchanged, stating the value of the properties and other consideration changing hands, and announcing the council's intent to authorize the exchange at its next regular meeting. (1971, c. 698, s. 1.)

§ **160A-272. Lease or rental of property.**—Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than 10 years (except as otherwise provided herein) and only if the council determines that the property will not be needed by the city for the term of the lease. Subject to G.S. 160A-321, a city-owned utility or public service enterprise may be leased for a period of more than 10 years. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included. Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

No public notice need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less. Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property. (1971, c. 698, s. 1.)

§ **160A-273. Grant of easements.**—A city shall have authority to grant easements over, through, under, or across any city property or the right-of-way of any public street or alley that is not a part of the State highway system. Easements in a street or alley right-of-way shall not be granted if the easement would substantially impair or hinder the use of the street or alley as a way of passage. A grant of air rights over a street right-of-way or other property owned by the city for the purpose of erecting a building or other permanent structure (other than utility wires or pipes) shall be treated as a sale of real property, except that a grant of air rights over a street right-of-way for the purpose of constructing a bridge or passageway between existing buildings on opposite sides of the street shall be treated as the grant of an easement. (1971, c. 698, s. 1.)

§ **160A-274. Sale, lease, exchange, and joint use of governmental property.**—(a) For the purposes of this section, "governmental unit" means a city, county, school administrative unit, sanitary district, fire district, the State, or any other public district, authority, department, agency, board, commission, or institution.

(b) Any governmental unit may, upon such terms and conditions as it deems wise, exchange with, lease to, lease from, sell to, purchase from, or enter into agreements regarding the joint use by any other governmental unit of any interest in real or personal property that it may own.

(c) Action under this section shall be taken by the governing body of the governmental unit. Action hereunder by any State agency, except the State Highway Commission, shall be taken only after approval by the Division of Property Control of the Department of Administration. Action with regard to State property under the control of the State Highway Commission shall be taken by the Commission or its duly authorized delegate. (1969, c. 806; 1971, c. 698, s. 1.)

Opinions of Attorney General. — Mr. W.F. Southern, Mayor Pro Tempore, Town of Walnut Cove, 12/1/69 (issued under former § 160-61.2).

§ **160A-275. Warranty deeds.**—Any city, county, or other municipal corporation is authorized to excute and deliver deeds to any real property with full covenants of warranty, without regard to how the property was acquired, when, in the opinion of the governing body, it is in the best interest of the city, county, or other municipal corporation to convey by warranty deed. Members of the governing boards of counties, cities, and other municipal corporations are hereby relieved of any personal or individual liability by reason of the execution of warranty deeds to governmentally owned property unless they act in fraud, malice, or bad faith. (1945, c. 962; 1955, c. 935; 1969, cc. 48, 223, 332; c. 1003, s. 5; 1971, c. 698, s. 1.)

§§ **160A-276 to 160A-280**: Reserved for future codification purposes.

ARTICLE 13.

Law Enforcement.

§ **160A-281. Policemen appointed.**—A city is authorized to appoint a chief of police and to employ other police officers who may reside outside the corporate limits of the city if the council shall permit. (R. C., c. 111, s. 16; Code, c. 3803; Rev., s. 2926; C. S., s. 2641; 1969, c. 23, s. 1; 1971, c. 698, s. 1.)

Municipality May Send Policemen to Training School.—The explicit power of a municipality to appoint and employ police contemplates that the persons so engaged be qualified and competent, and therefore a municipality has implied authority, exercisable within the discretion of its governing body, to send its policemen to a police training school and to make proper expenditures for this purpose. Green v. Kitchin, 229 N.C. 450, 50 S.E.2d 545 (1948) (decided prior to the enactment of § 160A-289). For a leading article on this case, see 27 N.C.L. Rev. 500.

§ **160A-282. Auxiliary police.**—A city may by ordinance provide for the organization of an auxiliary police department made up of volunteer members. While undergoing official training and while performing duties on behalf of the city pursuant to orders or instructions of the chief of police of the city, auxiliary policemen shall be entitled to all powers, privileges, and immunities afforded by law to regularly employed policemen, including benefits under the North Carolina Workmen's Compensation Act. (1969, c. 206, s. 1; 1971, c. 698, s. 1.)

§ **160A-283. Joint county and city auxiliary police.** — The governing body of any city, town, or county is hereby authorized to create and establish a joint law-enforcement officers' auxiliary force with one or more cities, towns, or counties. Each participating city, town, or county shall, by resolution or ordinance, establish the joint auxiliary police force. The resolution or ordinance shall specify whether the members of the joint auxiliary police force shall be volunteers or shall be paid. Members shall be appointed by the respective governmental units and shall take the oath required for regular police officers. The joint auxiliary force may be called into active service at any time by the mayor or chief of police of the participating town or city or the chairman of the board of commissioners or sheriff of a participating county. Members of the joint auxiliary force, while undergoing official training and while on active duty shall be members of the unit which called the auxiliary force into active duty and shall be entitled to all powers, privileges and immunities afforded by law to regularly employed law-enforcement officers of that unit including benefits under the Workmen's Compensation Act. Members of the joint auxiliary force shall not be considered as public officers within the meaning of the North Carolina Constitution. Such members shall be dressed in the uniform prescribed by such auxiliary force at any time such members or member exercises any of the duties or authority herein provided for. (1971, c. 607; c. 896, s. 4.)

Editor's Note.—This section was enacted as § 160-20.4. It was transferred to its present position by Session Laws 1971, c. 896, s. 4, effective Jan. 1, 1972.

§ **160A-284. Oath of office; holding other offices.** — Each person appointed or employed as chief of police, policeman, or auxiliary policeman shall take and subscribe before some person authorized by law to administer oaths the oath of office required by Article VI, Sec. 7, of the Constitution. The oath shall be filed with the city clerk. The offices of policeman, chief of police, and auxiliary policeman are hereby declared to be offices that may be held concurrently with any other appointive office pursuant to Article VI, Sec. 9, of the Constitution. (1971, c. 698, s. 1; c. 896, s. 4.)

Editor's Note.—This section was enacted as § 160A-283. It was renumbered § 160A-284 by Session Laws 1971, c. 896, s. 4, effective Jan. 1, 1972.

§ **160A-285. Powers and duties of policemen.**—As a peace officer, a policeman shall have within the corporate limits of the city all of the powers invested in law-enforcement officers by statute or common law. He shall also have power to serve all civil and criminal process that may be directed to him by any officer of the General Court of Justice and may enforce the ordinances and regulations of the city as the council may direct. (Code, s. 3811; Rev., s. 2927; C. S., s. 2642; 1971. c. 698, s. 1; c. 896, s. 4.)

Editor's Note.—This section was enacted as § 160A-284. It was renumbered § 160A-285 by Session Laws 1971, c. 896, s. 4, effective Jan. 1, 1972.

The cases cited in the following note were decided under former similar provisions.

Arrest without a Warrant. — A police officer may arrest without warrant for violation of municipal ordinances, committed in his presence; but the offender must be taken before the mayor as soon as practicable, a warrant obtained and trial had. State v. Freeman, 86 N.C. 683 (1882). But to make an arrest out of the town limits he must do so under a warrant or by virtue of §§ 15-40 and 15-41. Martin v. Houck, 141 N.C. 317, 54 S.E. 291 (1906). Otherwise the arrest will be an assault. Sossamon v. Cruse, 133 N.C. 470, 45 S.E. 757 (1903).

An instruction to the effect that police officers had a right to enter a cafe without a warrant and make whatever investigation they deemed necessary is held without error, since the officers have a right to enter a public place as invitees unless forbidden to enter therein, and further, officers may enter public or private property upon hearing a disturbance therein and make an arrest without a warrant to prevent a breach of the peace. State v. Wray, 217 N.C. 167, 7 S.E.2d 468 (1940).

A police officer within the limits of the city which has clothed him with authority, like a sheriff or constable, may summarily and without warrant arrest a person for a misdemeanor committed in his presence. This is a necessary concomitant of police power and essential for police protection. But in such case it is the duty of the officer to inform the person arrested of the charge against him and immediately take him before someone authorized to issue criminal warrants and have a warrant issued, giving him opportunity to provide bail and communicate with counsel and friends. Perry v. Hurdle, 229 N.C. 216, 49 S.E.2d 400 (1948).

The power of a policeman to arrest without a warrant is restricted to the corporate limits of the city, and an arrest out of the limits without a wrarrant for the breach of an ordinance is an assault. Sossamon v. Cruse, 133 N.C. 470, 45 S.E. 757 (1903). See Wilson v. Mooresville, 222 N.C. 283, 22 S.E.2d 907 (1942).

Force Allowed in Making Arrests. — If an officer is resisted in making an arrest, he may use that degree of force which is necessary to the proper performance of his duty, and, after an accused person is arrested, the officer is justified in the use of such force as may be necessary, even to taking life, to prevent his escape, whether the offense charged is a felony or misdemeanor. He may take such precautions as handcuffing or tying the prisoner. State v. Sigman, 106 N.C. 728, 11 S.E. 520 (1890).

No Right to Kill or Injure Misdemeanant Fleeing Arrest.—When a person charged with a misdemeanor is fleeing from arrest, and an officer shoots him, such officer is guilty of assault. If death results the officer is guilty of murder if he intended to kill, manslaughter if unintentional. State v. Sigman, 106 N.C. 728, 11 S.E. 520 (1890); Sossamon v. Cruse, 133 N.C. 470, 45 S.E. 757 (1903).

Duty to Submit Peaceably to Arrest.—When a person has been lawfully arrested by a lawful officer and understands that he is under arrest, it is his duty to submit peaceably to the arrest. State v. Cooper, 4 N.C. App. 210, 166 S.E.2d 509 (1969).

The words "submit peaceably to arrest" imply the yielding to the authority of a lawful officer, after being lawfully arrested. State v. Cooper, 4 N.C. App. 210, 166 S.E.2d 509 (1969).

A policeman has the authority under general statute to deputize a citizen to aid him in serving a warrant for breach of the peace, a policeman being given the same authority, within the town limits, in making arrests as a sheriff. Tomlinson v. Norwood, 208 N.C. 716, 182 S.E. 659 (1935). See §§ 14-224 and 15-45.

Service of Process. — Where a town charter provides for the appointment of a chief of police or marshal and declares that, in the execution of process, he shall have the same power, etc., which sheriffs and constables have, the service by such officer of a summons directed to "the sheriff of W. county or town constable of W. town" is valid. Lowe v. Harris, 121 N.C. 287, 28 S.E. 535 (1897).

§ 160A-286. Extraterritorial jurisdiction of policemen.—In addition to their authority within the corporate limits, city policemen shall have all the powers invested in law-enforcement officers by statute or common law within one mile of the corporate limits of the city.

When any offense is committed within the corporate limits of a city or within its extraterritorial jurisdiction under circumstances that would authorize a police officer to arrest the offender without a warrant, the officer may pursue the offender outside the corporate limits and outside the city's extraterritorial jurisdiction for a distance of not more than three miles from the corporate limits for the purposes of making an arrest. Any officer pursuing an offender outside the corporate limits or extraterritorial jurisdiction of the city shall be entitled to all of the privileges, immunities, and benefits to which he would be entitled if acting within the city, including coverage under the workmen's compensation laws. (1971, c. 698, s. 1; c. 896, s. 4.)

Editor's Note.—This section was enacted as § 160A-285. It was renumbered § 160A-286 by Session Laws 1971, c. 896, s. 4, effective Jan. 1, 1972.

§ **160A-287. City lockups.**—A city shall have authority to establish, erect, repair, maintain and operate a lockup for the temporary detention of prisoners pending their transferal to the county or district jail or the State Department of Corrections. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P. L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; c. 896, s. 4.)

Editor's Note.—This section was enacted as § 160A-286. It was renumbered § 160A-287 by Session Laws 1971, c. 896, s. 4, effective Jan. 1, 1972.

§ **160A-288. Law-enforcement officers of one political subdivision to assist officers of another political subdivision upon request.**—(a) Any political subdivision of the State upon the request of any other political subdivision of the State may send any law-enforcement officer or officers to assist the law-enforcement officers of the requesting political subdivision in the performance of their duties in cases of emergency. A complete record of the request and sending together with the names of the officers sent shall be recorded in the minutes of the next regular or special meeting of the governing bodies of both the requesting and the sending political subdivisions.

(b) This assistance shall be rendered only in emergencies, which shall be declared by the chief elected official of the requesting political subdivision, or, in his absence, the person normally acting in his stead during his absence. But no political subdivision shall request or send law-enforcement officers unless the requesting and sending political subdivisions have a prior agreement to do so, which agreement shall be spread upon the minutes of both governing bodies and duly signed. This agreement may provide for reimbursing the sending political subdivision for the services of the law-enforcement officers to be sent and any other expenses involved in the sending.

(c) When law-enforcement officers are sent to another political subdivision pursuant to this section, the jurisdiction, authority, rights, privileges and immunities, including coverage under the workmen's compensation laws, which they have in the sending political subdivision shall extend to and include the area in which like benefits and authorities are or could be afforded to the law-enforcement officers of the requesting political subdivision and the area between the two political subdivisions when the officer or officers are acting within the scope of the authority conferred by this section. When so sent, they shall have the same authority to make arrests and to execute criminal process as the law vests in the law-enforcement officers of the requesting political subdivision, but this section shall not extend the effect of the laws of the sending political subdivision. (1967, c. 846; 1971, c. 698, s. 1; c. 896, s. 4.)

Editor's Note.—This section was enacted as § 160A-287. It was renumbered § 160A-288 by Session Laws 1971, c. 896, s. 4, effective Jan. 1, 1972.

§ **160A-289. Training and development programs for law enforcement.**—A city shall have authority to plan and execute training and development programs for law-enforcement agencies, and for that purpose may

(1) Contract with other cities, counties, and the State and federal governments and their agencies;
(2) Accept, receive, and disburse funds, grants, and services;
(3) Create joint agencies to act for and on behalf of participating counties and cities;
(4) Make applications for, receive, administer, and expend federal grant funds; and
(5) Appropriate and expend available tax or nontax funds. (1969, c. 1145, s. 3; 1971, c. 698, s. 1; c. 896, s. 4.)

Cross Reference.—See note to § 160A-281.

Editor's Note.—This section was enacted as § 160A-288. It was renumbered § 160A-289 by Session Laws 1971, c. 896, s. 4, effective Jan. 1, 1972.

§ **160A-290**: Reserved for future codification purposes.

ARTICLE 14.

Fire Protection.

§ **160A-291. Firemen appointed.**—A city is authorized to appoint a fire chief; to employ other firemen; to establish, organize, equip, and maintain a fire department; and to prescribe the duties of the fire department. (1917, c. 136, sub-ch. 8, s. 1; C. S., s. 2801; 1969, c. 1065, s. 3; 1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former similar provisions.

The organization and operation of a fire department is a governmental, not a private or proprietary function. Great American Ins. Co. v. Johnson, 257 N.C. 367, 126 S.E.2d 92 (1962).

Liability for Failure to Furnish.—The maintenance of a fire department for extinguishing fire without cost to the property owner is a governmental function, and there is no liability for failure to provide adequate pressure or service in extinguishing a fire. Howland v. Asheville, 174 N.C. 749, 94 S.E. 524 (1917).

The power to regulate and prevent fire is governmental, and a failure to exercise this power does not subject a city to action for negligence which causes loss by fire. Harrington v. Greenville, 159 N.C. 632, 75 S.E. 849 (1912).

Liability for Negligence. — A city, in the absence of statutory provision to the contrary, is not liable for any damage occasioned by the negligence of its fire department. Mack v. City Water Works, 181 N.C. 383, 107 S.E. 244 (1921). The extinguishment of fires is a function which a municipal corporation undertakes in its governmental capacity, and in connection with which, in the absence of statutory provision to the contrary, it incurs no civil liability, either for inadequacy in equipment or for the negligence of its employees. See Seales v. Winston-Salem, 189 N.C. 469, 127 S.E. 543 (1925); Mabe v. Winston-Salem, 190 N.C. 486, 130 S.E. 169 (1925).

Liability for Injuries to Firemen. — A city is not liable to firemen for injuries sustained in the performance of their duties, although the appliances used were defective, and known to be defective, by the city, for the maintenance of a fire department is a governmental function. Peterson v. Wilmington, 130 N.C. 76, 40 S.E. 853 (1902).

§ **160A-292. Duties of fire chief.**—Where not otherwise prescribed, the duties of the fire chief shall be to preserve and care for fire apparatus, have charge of fighting and extinguishing fires and training the fire department, seek out and have corrected all places and conditions dangerous to the safety of the city and its citizens from fire, and make annual reports to the council concerning these duties. (1969, c. 1065, s. 3; 1971, c. 698, s. 1.)

§ **160A-293. Fire protection outside city limits; immunity; injury to firemen.**—(a) A city may install and maintain water mains, pipes, hydrants, buildings and equipment outside its corporate limits and may send its firemen and equipment outside its corporate limits to provide fire protection to rural or unincorporated areas pursuant to agreements between the city and the county, or between the city and the owner of the property to be protected. Counties are hereby authorized to enter into these agreements and to make from tax funds any payments agreed upon for rural fire protection.

(b) No city or any officer or employee thereof shall be held to answer in any civil action or proceeding for failure or delay in answering calls for fire protection outside the corporate limits, nor shall any city be held to answer in any civil action or proceeding for the acts or omissions of its officers or employees in rendering fire protection services outside its corporate limits.

(c) Any employee of a city fire department, while engaged in any duty or activity outside the corporate limits of the city pursuant to orders of the fire chief or council, shall have all of the jurisdiction, authority, rights, privileges, and immunities, including coverage under the workmen's compensation laws, which they have within the corporate limits of the city. (1919, c. 244; C. S., s. 2804; 1941, c. 188; 1947, c. 669; 1949, c. 89; 1971, c. 698, s. 1.)

Editor's Note.—The case cited in the following note was decided under former § 160-238.

Agreement to Furnish Fire Protection as Compensation for Easement.—A municipality has the authority to compensate landowners for a water and sewer line easement across a tract of land located outside the municipal limits by an agreement to furnish fire protection for any buildings located on such tract. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970).

Does Not Constitute Waiver of Governmental Immunity. — An agreement by a municipality to furnish fire protection for property lying outside the municipality as compensation for a water line and sewer easement across such property does not constitute a waiver of the municipality's governmental immunity with respect to torts committed in the maintenance or operation of its fire department. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970).

And Profit Does Not Make Such Furnishing Proprietary Function. — The fact that a water and sewer easement obtained by a municipality in exchange for its promise to furnish fire protection permitted the municipality to sell water at a profit does not make the furnishing of such fire protection a proprietary rather than a governmental function. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970).

Failure to Promptly Respond to Call from outside Municipal Limits.—Although a municipality has contracted to furnish fire protection for property of plaintiffs lying outside the municipal limits, an alleged failure of members of the municipal fire department to respond promptly to a call for assistance in fighting a fire upon such property would constitute a negligent omission, not a breach of contract, for which the municipality has governmental immunity. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970).

§§ **160A-294, 160A-295**: Reserved for future codification purposes.

ARTICLE 15.

Streets, Traffic and Parking.

§ **160A-296. Establishment and control of streets.**—A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the State Highway Commission. General authority and control includes but is not limited to:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper repair;

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary obstructions;

(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent domain;

(4) The power to close any street or alley either permanently or temporarily;

(5) The power to regulate the use of the public streets, sidewalks, alleys, and bridges;

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the surface;

(7) The power to provide for lighting the streets, alleys, and bridges of the city; and

(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273. (1917, c. 136, sub-ch. 5, s. 1; sub-ch. 10, s. 1; 1919, cc. 136, 237; C. S., ss. 2787, 2793; 1925, c. 200; 1963, c. 986; 1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former similar provisions.

Statutory Obligation of State Highway Commission. — This section and §§ 136-66.1 and 136-93 indicate that the Highway Commission is under a statutory obligation with reference to the construction, maintenance and repair of all city streets, including culverts which support city streets, which constitute a part of the State highway system. Milner Hotels, Inc. v. City of Raleigh, 271 N.C. 224, 155 S.E.2d 543 (1967). See § 160A-297.

May Not Be Assumed by Municipality.—This section and §§ 136-66.1 and 136-93 do not authorize a municipality, in the absence of specific legislative authority, to contract to take over the responsibilities of the Highway Commission with reference to the construction, maintenance and repair of city streets and supporting culverts which constitute a part of the State highway system. Milner Hotels, Inc. v. City of Raleigh, 271 N.C. 224, 155 S.E.2d 543 (1967).

The duty of keeping the streets repaired devolves upon the municipality functioning through the proper officials. In Bunch v. Edenton, 90 N.C. 531 (1886), the court said that it is the positive duty of the corporate authorities of a town to keep the streets, including the sidewalks, in "proper repair," that is, in such condition as that the people passing and repassing over them might at all times do so with reasonable ease, speed and safety. Positive nuisances on or near the streets should be forbidden under proper penalties, and, when they exist, should be abated. Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905).

Streets shall be kept in proper repair to the extent that this can be accomplished by proper and reasonable care and continuing supervision. Willis v. New Bern, 191 N.C. 507, 132 S.E. 286 (1926); Hunt v. High Point, 226 N.C. 74, 36 S.E.2d 694 (1946).

This duty extends to streets dedicated and accepted by the municipality but not to streets or portions of streets not accepted by it although dedicated by some individual. Hughes v. Clark, 134 N.C. 457, 46 S.E. 956, 47 S.E. 462 (1904).

And to Sidewalks.—The rights, powers, and liability of the municipality extend equally to the sidewalk as to the roadway, for both are parts of the street, and towns and cities are held to the same degree of liability for failure to repair sidewalks as to repair the other part of the street. Bunch v. Edenton, 90 N.C. 431 (1886); Tate v. Greensboro, 114 N.C. 392, 19 S.E. 767 (1894); Wolfe v. Pearson, 114 N.C. 621, 19 S.E. 264 (1894); Russell v. Monroe, 116 N.C. 720, 21 S.E. 550, 47 Am. St. R. 823 (1895); Neal v. Marion, 129 N.C. 345, 40 S.E. 116 (1901); Hester v. Traction Co., 138 N.C. 288, 50 S.E. 711 (1905).

Guarding against Perilous Places. — Proper repair implies that all bridges, dangerous pits, embankments, dangerous walls, and like perilous places and things very near and adjoining the streets shall be guarded against by proper railings and barriers or other reasonably necessary signals for the protection of the public. Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905); Willis v. New Bern, 191 N.C. 507, 132 S.E. 286 (1926); Hunt v. High Point, 226 N.C. 74, 36 S.E.2d 694 (1946).

Commissioners' Duty. — This section does not impose on the commissioners the duty to personally work the streets, but it does impose on them a duty to keep them in repair. Although the power allows discretion, the commissioners are subject to indictment for neglecting to keep public streets in repair. State v. Dickson, 124 N.C. 871, 32 S.E. 961 (1899).

Contracts with and Duties of Public Service Companies to Repair.—A city may by contract with a street railroad provide for the repair of the street between the tracks, as a consideration for the franchise, and the railroad will be required to repair and keep its part in the same condition as the rest of the street. New Bern v. Atlantic, etc., R. Co., 159 N.C. 542, 75 S.E. 807 (1912).

Pipes, conduits, rails, and structures

erected or constructed in the city streets under a general grant of authority to use the streets therefor are subject to the paramount power and duty of the city to repair, alter, and improve the streets, as the city, in its discretion, may deem proper, and to construct therein sewers and other improvements for the public benefit. Raleigh v. Carolina Power Co., 180 N.C. 234, 104 S.E. 462 (1920).

Liability for Damage in Maintaining Streets.—Where a municipal corporation has authority to grade its streets it is not liable for consequential damage, unless the work was done in an unskillful and incautious manner. Meares v. Wilmington, 31 N.C. 73 (1848). This holding has been approved and followed in many subsequent cases. Salisbury v. Western North Carolina Railroad, 91 N.C. 490 (1884); Wright v. Wilmington, 92 N.C. 160 (1885); Tate v. Greensboro, 114 N.C. 392, 19 S.E. 767 (1894); Wolfe v. Pearson, 114 N.C. 621, 19 S.E. 264 (1894); Brown v. Electric Co., 138 N.C. 533, 51 S.E. 62 (1905); Small v. Edenton, 146 N.C. 527, 60 S.E. 413 (1908); Ward v. Commissioners, 146 N.C. 534, 60 S.E. 418 (1908); Jones v. Henderson, 147 N.C. 120, 60 S.E. 894 (1908). In Thomason v. Seaboard, etc., R. Co., 142 N.C. 300, 55 S.E. 198 (1906), the subject is referred to as "the settled doctrine of this State." Dorsey v. Henderson, 148 N.C. 423, 62 S.E. 547 (1908).

The discretionary power of repairing and maintaining a street is vested in the commissioners of a city, and an action for damages caused by cutting of trees in the street, by them, will not lie in favor of an abutting property owner, in the absence of negligence, malice, or wantonness. Tate v. Greensboro, 114 N.C. 392, 19 S.E. 767 (1894).

Liability for Failure to Maintain or Repair Streets.—This section imposes on a municipality the positive duty to maintain its streets in a reasonably safe condition for travel, and negligent failure to do so will render it liable to private action for proximate injury. Bunch v. Edenton, 90 N.C. 431 (1884); Russell v. Monroe, 116 N.C. 720, 121 S.E. 550, 47 Am. St. R. 823 (1895); Neal v. Marion, 129 N.C. 345, 40 S.E. 116 (1901); Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905); Graham v. Charlotte, 186 N.C. 649, 120 S.E. 466 (1923); Michaux v. Rocky Mount, 193 N.C. 550, 137 S.E. 663 (1927); Speas v. Greensboro, 204 N.C. 239, 167 S.E. 807 (1933); Radford v. Asheville, 219 N.C. 185, 13 S.E.2d 256 (1941); Waters v. Belhaven, 222 N.C. 20, 21 S.E.2d 840 (1942); Millar v. Wilson, 222 N.C. 340, 23 S.E.2d 42 (1942); Hunt v. High Point, 226 N.C. 74, 36 S.E.2d 694 (1946).

The governing authorities of a town or city have the duty imposed upon them by law of exercising ordinary care to maintain its streets and sidewalks in a condition reasonably safe for those who use them in a proper manner. Faw v. North Wilkesboro, 253 N.C. 406, 117 S.E.2d 14 (1960); Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

It is the duty of the city to exercise a reasonable and continuing supervision over its streets in order that it may know their condition and, it is held to have knowledge of a defect which such inspection would have disclosed to it. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

And to Use Due Care to Keep Them in Reasonably Safe Condition. — While the city is not an insurer of the safety of one who uses its streets and sidewalks, it is under a duty to use due care to keep its streets and sidewalks in a reasonably safe condition for the ordinary use thereof. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

In Willis v. New Bern, 191 N.C. 507, 132 S.E. 286 (1926) it is said that streets shall be constructed in a reasonably safe manner, and to this end ordinary care must be exercised at all times. They shall be kept in proper repair or in a reasonably safe condition to the extent that this can be accomplished by proper and reasonable care and continuing supervision. Hunt v. High Point, 226 N.C. 74, 36 S.E.2d 694 (1946).

And to Discover Defects. — The city's duty to inspect and discover defects in its streets does not go beyond the duty to exercise reasonable care in that respect. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

But Municipality Is Not Insurer of Condition of Streets.—While it is the duty of the city to keep its streets in such repair that they are reasonably safe for public travel, it is not an insurer of such condition nor does it warrant that they shall at all times be absolutely safe. A city is only responsible for a negligent breach of duty. Fitzgerald v. Concord, 140 N.C. 110, 5 S.E. 309 (1905).

Duty to Take Measures to Avert Injury.—Negligent failure to take such measures as ordinary prudence requires to avert injury, where the municipality has actual or imputable knowledge of the dangerous condition, will render municipality liable for injury proximately caused. Hunt

v. High Point, 226 N.C. 74, 36 S.E.2d 694 (1946).

Liability arises only for a negligent breach of duty. Faw v. North Wilkesboro, 253 N.C. 406, 117 S.E.2d 14 (1960); Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Necessity for Notice of Defect.—Since the liability depends upon the negligence of the city, it is evident that before such negligence can exist the city must have had notice of the defect or with the exercise of reasonable diligence would have had notice of it. Jones v. Greensboro, 124 N.C. 310, 32 S.E. 675 (1899).

Plaintiff Must Prove Notice. — So in order to establish responsibility, it is not sufficient to show that a defect existed and an injury has been caused thereby. It must be further shown that the officers of the town "knew, or by ordinary diligence might have discovered, the defect, and the character of the defect was such that injuries to travellers therefrom might reasonably be anticipated." Jones v. Greensboro, 124 N.C. 310, 32 S.E. 675 (1899); Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905); Faw v. North Wilkesboro, 253 N.C. 406, 117 S.E.2d 14 (1960).

It is necessary for a complaining party to show more than the existence of a defect in the street or sidewalk and the injury; he must also show that the officers of the town or city knew, or by ordinary diligence, might have known of the defect, and the character of the defect was such that injuries to travellers using its street or sidewalk in a proper manner might reasonably be foreseen. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Notice of Defect Itself Must Be Shown.—The notice, actual or implied, of a highway defect causing injuries which a municipality must receive as a condition precedent of liability for those injuries, is notice of the defect itself which occasioned the injury, and not merely of conditions naturally productive of that defect and subsequently in fact producing it. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Implied Notice.—When observable defects in a highway have existed for a time so long that they ought to have been observed, notice of them is implied. Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905).

Actual notice of a defect is not required. Notice of a dangerous condition in a street or sidewalk will be imputed to the town or city, if its officers should have discovered it in the exercise of due care. Faw v. North Wilkesboro, 253 N.C. 406, 117 S.E.2d 14 (1960); Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Same—Question for Jury.—On the question of notice implied from the continued existence of a defect, no definite or fixed rule can be laid down as to the time required, and it is usually a question for the jury on the facts and circumstances of each particular case. Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905).

Notice of Latent Defects. — Notice of latent defects should not be so readily presumed from their continuance as open and obvious defects. Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905).

Character of Defect Must Be Shown.—To recover for injuries received from a fall on a defective street, the plaintiff must not only show that the city knew of the defect but must go further and show that the character of the defect was such that injuries to travellers using its street or sidewalk in a proper manner might reasonably be foreseen. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Trivial Defects Will Not Make City Liable.—It is not every defect in a street or sidewalk which will render a city liable to a person who falls as a result thereof. Trivial defects, which are not naturally dangerous, will not make the city liable for injuries occasioned thereby. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Independent Contributory Cause.—When two causes combine to produce an injury to a traveler on a highway, both of which are in their nature proximate — the one being a culpable defect in the highway, and the other some occurrence for which neither party is responsible—the municipality is liable, provided the injury would not have been sustained but for such defect. Dillon v. Raleigh, 124 N.C. 184, 32 S.E. 548 (1899).

Liability for Obstructions.—A city does not have discretionary power to put obstructions in its streets, and it is liable for its negligence in putting or leaving obstructions in the street to one injured by such obstruction. Graham v. Charlotte, 186 N.C. 649, 120 S.E. 466 (1923).

Same—Bridges Must Be as Wide as Street.—A city under the authority of this section in building and repairing streets has no right in building a bridge to obstruct the street with concrete pilasters, and for injuries caused by such obstruction it is liable. Graham v. Charlotte, 186 N.C. 649, 120 S.E. 466 (1923).

Same—Joint Liability with Private Individual.—If any person shall unlawfully erect an obstruction or nuisance in the streets of a city, and the town authorities shall permit it to remain an unreasonable length of time, the town and the tort-feasor are jointly and severally liable to the traveler for an injury resulting therefrom, without any fault on his part. The question of primary and secondary liability is for the offending parties to adjust between themselves. Dillon v. Raleigh, 124 N.C. 184, 32 S.E. 548 (1899).

An individual may restrain the wrongful obstruction of a public way, of whatever origin, if he will suffer injury thereby as distinct from the inconvenience to the public generally, and he may recover such special damages as he has sustained by reason of the obstruction. Wofford v. North Carolina State Highway Comm'n, 263 N.C. 677, 140 S.E.2d 376 (1965).

Failure to Light Street. — While a city may not be under legal necessity of lighting its streets at all, where it does maintain street lights its failure to provide lighting which is reasonably required at a particular place because of the dangerous condition of street is negligent failure to discharge its duty to maintain the streets in a reasonably safe condition for travel. Hunt v. High Point, 226 N.C. 74, 36 S.E.2d 694 (1946).

A municipality is responsible for the condition of its sidewalks. Dunning v. Forsyth Warehouse Co., 272 N.C. 723, 158 S.E.2d 893 (1968).

But one other than the municipality may be held liable for injuries caused by a defect in the sidewalk if he created the defect. Dunning v. Forsyth Warehouse Co., 272 N.C. 723, 158 S.E.2d 893 (1968).

Liability of Abutting Owner as to Pedestrians.—Insofar as pedestrians are concerned, any liability of owner, or of occupant of abutting property, for hazardous condition existent upon adjacent sidewalk is limited to conditions created or maintained by him, and must be predicated upon his negligence in that respect. Dunning v. Forsyth Warehouse Co., 272 N.C. 723, 158 S.E.2d 893 (1968).

Abutting Owner Has No Right to Remove Nuisance.—When a street is repaired or changed by a city so as to damage an owner of the fee in the street or to cause a nuisance the owner has no right to change the condition of the street so as to remove the nuisance or lessen the damage, and such act will subject him to indictment. State v. Wilson, 107 N.C. 865, 12 S.E. 320 (1890).

Ratification of Unauthorized Repair by City.—When an unauthorized person does an act of repair to streets that might have been done by a city, a ratification by the city will relieve him of any liability as a trespasser. Wolfe v. Pearson, 114 N.C. 621, 19 S.E. 264 (1894).

City Cannot Plead Governmental Immunity.—A municipality cannot, with impunity, create in its streets a condition palpably dangerous, neglect to provide the most ordinary means of protection against it, and avoid liability for proximate injury on the plea of governmental immunity. Hunt v. High Point, 226 N.C. 74, 36 S.E.2d 694 (1946).

As an exception to the doctrine of governmental immunity, it has been uniformly held in this jurisdiction that municipalities may be held liable in tort for failure to maintain their streets in a reasonably safe condition, and they are now required by this section to do so. Clark v. Scheld, 253 N.C. 732, 117 S.E.2d 838 (1961).

The opening and closing of streets is a governmental function. Bessemer Improvement Co. v. Greensboro, 247 N.C. 549, 101 S.E.2d 336 (1958).

It Is Discretionary Power. — Defendant town, in cooperation with the federal and State authorities in procuring the construction of an underpass and the elimination of two grade crossings, closed two of its streets at the railroad crossings. This action was instituted by property holders adjacent to the railroad tracks and along one of the closed streets, alleging that the order closing the streets was ultra vires and resulted in the creation of a nuisance causing injury to plaintiffs' property. It was held that defendant town had authority, under express provision of its charter and under this section to close the said streets at the crossings in the interest of public welfare, and, therefore, the closing of the streets was in the exercise of a discretionary governmental power with which the courts can interfere only in instances of fraud or oppression constituting a manifest abuse of discretion and did not constitute a nuisance or abuse of discretion, defendant town's demurrer to the complaint was properly sustained. Sanders v. Atlantic Coast Line R. Co., 216 N.C. 312, 4 S.E.2d 902 (1939).

And Exclusive. — A municipal corporation is usually given express power by its charter to lay out and open streets. Such charter provisions are supplemented by our general statutes. Under the power thus conferred the municipal authorities are the sole judges of the necessity or expediency of exercising that right. Its power over its streets is exclusive. Waynesville v. Satterthwait, 136 N.C. 226, 48 S.E. 661 (1904); Moore v. Meroney, 154 N.C. 158, 69 S.E. 838 (1910); Michaux v. Rocky Mount, 193 N.C. 550, 137 S.E. 663 (1927). Authorities of the county embracing such municipality are precluded from exercising the same power within the same territory. Parsons v. Wright, 223 N.C. 520, 27 S.E.2d 534 (1943).

All or Part of Street May Be Closed.—Whether a street lies in a subdivision or is of other origin, the city may close all or part of it upon compliance with statutory procedure. Wofford v. North Carolina State Highway Comm'n, 263 N.C. 677, 140 S.E.2d 376 (1965).

But the closing of a street must not deprive a property owner of reasonable ingress or egress. Wofford v. North Carolina State Highway Comm'n, 263 N.C. 677, 140 S.E.2d 376 (1965).

Diminution of Access from Change of Grade Is Damnum Absque Injuria. — When a city acts for public convenience under the authority granted it by the legislature and raises or lowers the grade of a street, any diminution of access by an abutting property owner is damnum absque injuria. The abutting property owner can neither prevent the change by injunction nor recover damages for the diminished value of his property, when the work is done in conformity with plans designated to promote public convenience. Thompson v. Seaboard Air Line R. Co., 248 N.C. 577, 104 S.E.2d 181 (1958).

Narrowing Sidewalk. — An abutting owner may not recover from a city damages resulting to his property by reason of the fact that the abutting sidewalk has been narrowed in order to widen the street under orders of the city commissioners, the width of the street and sidewalk being within the sound discretion of the commissioners. Ham v. Durham, 205 N.C. 107, 170 S.E. 137 (1933).

Power to Regulate Crossings. — The right of the city government, both under its police powers and the several statutes applicable to require railroads to construct bridges or viaducts, along streets running over their tracks, is fully established in this jurisdiction and is recognized in well-considered cases elsewhere. Atlantic, etc., R. Co. v. Goldsboro, 155 N.C. 356, 71 S.E. 514 (1911); Powell v. Seaboard Air Line R. Co., 178 N.C. 243, 100 S.E. 424 (1919); Northern P. R. Co. v. Minnesota, 208 U.S. 583, 28 S. Ct. 341, 52 L. Ed. 630 (1908).

A city has both inherent power and authority by general statute over its streets for the protection of its citizens, which is not taken from it by § 62-50, conferring like powers upon the Utilities Commission. Durham v. Southern R. Co., 185 N.C. 240, 117 S.E. 17 (1923).

The exercise by the State of its power to provide for the safety of its citizens with respect to grade crossings of its streets by a railroad company is within its police powers, and may be exercised by municipal corporations under authority conferred on them, and not being delegated to the national government, it is not affected by federal legislation upon interstate commerce or the Federal Transportation Act. Durham v. Southern R. Co., 185 N.C. 240, 117 S.E. 17 (1923), aff'd, 266 U.S. 178, 45 S. Ct. 51, 69 L. Ed. 231 (1924).

A city charter giving a city specific authority to erect gates at a railroad crossing, or to require the railroad company to place a flagman there to warn pedestrians, with provision that such authority shall not be exclusive, does not limit the authority of the city therein, or take from it the inherent and statutory right to require that the railroad company construct an underpass for the protection of the public. Durham v. Southern R. Co., 185 N.C. 240, 117 S.E. 17 (1923).

Regulation of Selling from Mobile Units on Streets.—In the exercise of express powers conferred upon municipal corporations by the General Assembly a municipal corporation has the implied power to adopt an ordinance providing for the reasonable regulation, but not for the prohibition, of the sale and offering for sale of merchandise upon its streets from mobile units. State v. Byrd, 259 N.C. 141, 130 S.E.2d 55 (1963), decided prior to the 1963 amendment which added subdivision (42) of former § 160-200 giving authority to prohibit peddlers, etc. (now § 160A-178).

Use of Streets for Other Purposes.—"While it is the duty of a municipal corporation to use reasonable care to keep its streets in a safe condition to drive upon, it has the right to devote the sides of the streets to other useful public purposes, provided it leaves an unobstructed driveway of ample width for the passage of teams. It may construct sidewalks for a higher grade and gutters of a lower grade than the driveway, place curbing on the line of the gutters, erect hydrants and authorize the erection of hitching posts and stepping stones as well as poles to support the wires of telegraph and telephone lines." Dougherty v. Horseheads, 159 N.Y. 154, 53 N.E. 799 (1912), quoted in Rollins v. Winston-Salem, 176 N.C. 411, 97 S.E. 211 (1918).

Adjoining Owner Takes Title Subject to City's Powers.—The purchaser of a lot abutting a public street, whatever the origin of the street, takes title subject to the authority of the city to control and limit its use and to abandon or close it under lawful procedure. Wofford v. North Carolina State Highway Comm'n, 263 N.C. 677, 140 S.E.2d 376 (1965).

A city may acquire and operate its own tow-in vehicles. In such case, it may direct its police officers to call city owned tow-in vehicles exclusively, where the owner of the disabled automobile makes no selection himself, and it may, in the interest of safety, forbid privately owned tow-in vehicles to go to the scene of an accident without first having been called by the owner of a disabled vehicle or by the police. S & R Auto & Truck Serv., Inc. v. City of Charlotte, 268 N.C. 374, 150 S.E.2d 743 (1966).

Or May Instruct Police Officers to Call Privately Owned Towing Service. — In lieu of using its own vehicles, a city may instruct its police officers to call a privately owned towing service; it may leave the selection of such service to the discretion of the officer at the scene of the accident. S & R Auto & Trust Serv., Inc. v. City of Charlotte, 268 N.C. 374, 150 S.E.2d 743 (1966).

§ 160A-297. Streets under authority of State Highway Commission.—(a) A city shall not be responsible for maintaining streets or bridges under the authority and control of the State Highway Commission, and shall not be liable for injuries to persons or property resulting from any failure to do so.

(b) A city may, at its own expense, widen any street or bridge under the authority and control of the State Highway Commission, subject to the Commission's engineering and design specifications.

(c) Nothing in this Article shall authorize any city to interfere with the rights and privileges of the State Highway Commission with respect to streets and bridges under the authority and control of the Commission. (1925, c. 71, s. 3; 1957, c. 65, s. 11; 1971, c. 698, s. 1.)

§ 160A-298. Railroad crossings.—(a) A city shall have authority to direct, control, and prohibit the laying of railroad tracks and switches in public streets and alleys and to require that all railroad tracks, crossings, and bridges be constructed so as not to interfere with drainage patterns or with the ordinary travel and use of the public streets and alleys.

(b) The costs of constructing, reconstructing, and improving public streets and alleys, including the widening thereof, within areas covered by railroad cross ties, including cross timbers, shall be borne equally by the city and the railroad company. The costs of maintaining and repairing such areas after construction shall be borne by the railroad company.

(c) A city shall have authority to require the installation, construction, erection, reconstruction, and improvement of warning signs, gates, lights, and other safety devices at grade crossings, and the city shall bear ninety percent (90%) of the costs thereof and the railroad company shall bear ten percent (10%) of the costs. The costs of maintaining warning signs, gates, lights, and other safety devices installed after January 1, 1972, shall be borne equally by the city and the railroad company. The maintenance shall be performed by the railroad company and the city shall pay annually to the railroad company fifty percent (50%) of these costs. In maintaining maintenance cost records and determining such costs, the city and the railroad company shall use the same methods and procedures as are now or may hereafter be used by the State Highway Commission.

(d) A city shall have authority to require that a grade crossing be eliminated and replaced by a railroad bridge or by a railroad underpass, if the council finds as a fact that the grade crossing constitutes an unreasonable hazard to vehicular or pedestrian traffic. In such event, the city shall bear ninety percent (90%) of the costs and the railroad company shall bear ten percent (10%) of the costs. If the city constructs a new street which requires a grade separation and which does not replace an existing street, the city shall bear all of the costs. If a railroad company constructs a new track across at grade, or under, or over an existing street, the railroad company shall pay the entire cost thereof. The city shall pay the costs of maintaining street bridges which cross over railroads. Railroad companies shall pay the cost of maintaining railroad bridges over streets, except that cities shall pay the costs of maintaining street pavement, sidewalks, street drainage, and street lighting where streets cross under railroads.

(e) Whenever the widening, improving, or other changes in a street require that a railroad bridge be relocated, enlarged, heightened, or otherwise reconstructed, the city shall bear ninety percent (90%) of the costs and the railroad company shall bear ten percent (10%) of the costs.

(f) It is the intent of this section to make uniform the law concerning the construction and maintenance of railroad crossings, bridges, underpasses, and warning devices within cities. To this end, all general laws and local acts in conflict with this section are repealed, and no local act taking effect on or after January 1, 1972, shall be construed to modify, amend, or repeal any portion of this section unless it specifically so provides by express reference to this section. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1971, c. 698, s. 1.)

Cross Reference.—See note to § 160A-296.

Cost of Automatic Signal Devices at Railroad Crossings.—A city has authority, in the exercise of its police power to promote public safety and convenience, to allocate to a railway company some portion of the costs of the installation and maintenance of automatic signal devices at road crossings. Allocations so made would constitute a denial of a railway company's constitutional right to substantive due process only if the proportion of the costs allocated to it was so unreasonable as to constitute an arbitrary taking of its property. Southern Ry. v. City of Winston-Salem, 275 N.C. 465, 168 S.E.2d 396 (1969) (decided under former § 160-200).

§ 160A-299. Procedure for permanently closing streets and alleys.—(a) When a city proposes to permanently close any street or public alley, the counsel shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the State Highway Commission, a copy of the resolution shall be mailed to the Commission. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located.

(b) Any person aggrieved by the closing of any street or alley including the State Highway Commission if the street or alley is under its authority and control, may appeal the council's order to the General Court of Justice within 30 days after its adoption. The court shall hear the matter de novo, and shall have full jurisdiction to try the issues arising and to order the street or alley closed upon proper findings of fact by the jury. No cause of action or defense founded upon the invalidity of any proceedings taken in closing any street or alley may be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within 30 days after the order is adopted.

(c) Upon the closing of a street or alley in accordance with this section, all right, title, and interest in the right-of-way shall be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the street or alley, and the title of such adjoining landowners, for the width of the abutting land owned by them, shall extend to the center line of the street or alley.

(d) This section shall apply to any street or public alley that has been irrevocably dedicated to the public, without regard to whether it has actually been opened. (1971, c. 698, s. 1.)

§ 160A-300. Traffic control.—A city may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic upon the public streets, sidewalks, alleys, and bridges of the city. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former § 160-200.

For note on trend away from governmental immunity to liability for a defective traffic signal, see 6 Wake Forest Intra. L. Rev. 518 (1970).

Regulation of Traffic and Use of Streets.—Every municipal corporation has specific statutory authority to adopt such ordinances for the regulation and use of its streets as it deems best for the public welfare of its citizens and to provide for the regulation and diversion of vehicular traffic upon its streets. Gene's, Inc. v. Charlotte, 259 N.C. 118, 129 S.E.2d 889 (1963).

The installation and maintenance of traffic lights by a municipality is in the interest of the public safety in the exercise of the police power and is a discretionary governmental function. Hodges v. Charlotte, 214 N.C. 737, 200 S.E. 889 (1939).

Subsections (11) and (31) of former § 160-200 authorized the erection of automatic traffic control lights by municipalities. Upchurch v. Hudson Funeral Home, Inc., 263 N.C. 560, 140 S.E.2d 17 (1965).

While municipalities are not required to install electrical traffic control signals, they may do so as an exercise of their police power. Rappe v. Carr, 4 N.C. App. 497, 167 S.E.2d 49 (1969).

The installation and maintenance of electrical traffic control signals in and by municipalities are governmental functions and not proprietary or corporate functions. Rappe v. Carr, 4 N.C. App. 497, 167 S.E.2d 49 (1969).

In the installation and maintenance of traffic light signals, a city exercises a discretionary governmental function solely for the benefit of the public and may not be held liable for negligence of its officers and agents in respect thereto. Hamilton v. Hamlet, 238 N.C. 741, 78 S.E.2d 770 (1953).

§ 160A-301. On-street parking. — A city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges. To enforce an on-street parking ordinance, a city may install a system of parking meters and make it unlawful to park at a metered location unless the meter is kept in continuous operation. The meters may be actuated by coins or tokens, but no more than ten cents shall be required to actuate an on-street parking meter for one hour. The proceeds from the use of parking meters shall be used either (i) to defray the cost of enforcing and administering traffic and parking ordinances and regulations, or (ii) to acquire, construct, reconstruct, improve, extend, or operate off-street parking facilities. Parking meter revenues may also be pledged to amortize bonds or other evidences of debt issued under the Local Government Revenue Bond Act. Nothing contained in Public Laws 1921, Chapter 2, Section 29, or Public Laws 1937, Chapter 407, Section 61, shall be construed to affect the validity of a parking meter ordinance or the revenues realized therefrom. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former § 160-200(31).

Prohibiting Parking in Certain Places.—A city ordinance prohibiting parking of automobiles on one side of a street on certain blocks where, because of the narrowness of the street, there is insufficient room for cars to pass between parked cars and a streetcar track in the street, was valid in the light of subdivision (31) of former § 160-200. State v. Carter, 205 N.C. 761, 172 S.E. 415 (1934).

A municipality may require a motorist who parks his vehicle in a parking meter zone to set the meter in operation by depositing a coin, provided that the deposit of the coin is the method selected by its governing body in the exercise of its discretion for the purpose of regulating parking in the interest of the public convenience and not as a revenue raising measure. State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952).

The deposit of a coin by a motorist at the time of parking, to activate the parking meter, is not a fee or charge or toll for using the parking space. It is simply the method adopted by the governing authorities of the city for putting the meter in operation. The revenue derived therefrom is expressly set apart and dedicated to a particular use by the legislature in the act granting authority to municipalities to regulate parking in areas congested by motor traffic by the use of parking meters. Britt v. Wilmington, 236 N.C. 446, 73 S.E.2d 289 (1952).

But Revenue Derived Is in the Nature of a Tax.—The revenue derived from the on-street parking facilities is exacted in the performance of a governmental function. It must be set apart and used for a specific purpose. By whatever name called, it is in the nature of a tax. Britt v. Wilmington, 236 N.C. 446, 73 S.E.2d 289 (1952).

Validity of Parking Meter Ordinances.—Where a municipal ordinance prescribes one-hour and two-hour parking meter zones upon the deposit of a five-cent coin, the ordinance may permit by nonpenal provisions that a motorist may deposit a one-cent coin for a shorter length of time, provided the motorist may, by depositing additional pennies, not to exceed a total of five, remain in the parking space for the total length of time prescribed by the ordinance for such zone. State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952).

Where a municipal ordinance prescribes that parking in a designated zone should be limited to one hour, a motorist cannot be convicted of overtime parking when he parks in such zone for less than the prescribed one-hour period, and a provision of the ordinance that a motorist should be subject to criminal prosecution if he parks in the one-hour zone for longer than twelve minutes upon the deposit of a one-cent coin, or twenty-four minutes upon the deposit of two one-cent coins for successive periods, is held unconstitutional as being discriminatory and as making the period of time dependent not upon public convenience but upon the amount of money deposited. State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952).

Contract Binding City to Enact Parking Meter Ordinance.—A municipality may not bind itself to enact or enforce on-street and off-street parking regulations by penal ordinance for the period during which bonds issued to provide off-street parking facilities should be outstanding, since it may not contract away or bind itself in regard to its freedom to enact governmental regulations. Britt v. Wilmington, 236 N.C. 446, 73 S.E.2d 289 (1952).

In Graham v. Karpark Corp., 194 F.2d 616 (1952), it was held that a contract made with a parking meter manufacturer by city commissioners whereby they agreed to enact ordinances requiring parking meters and to enforce these ordinances until the meters were paid for, did not constitute a bargaining away of governmental powers, but was valid and binding upon the commissioners' successors in office.

§ 160A-302. Off-street parking facilities.—A city shall have authority to own, acquire, establish, regulate, operate, and control off-street parking lots, parking garages, and other facilities for parking motor vehicles, and to make a charge for the use of such facilities. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1.)

Cross Reference.—As to power of municipality to use revenue from on-street parking meters to finance off-street parking facilities, see § 160A-301.

§ 160A-302.1. Fishing from bridges regulated.—The governing body of any municipality is hereby authorized to enact an ordinance prohibiting or regulating fishing from any bridge for the purpose of protecting persons fishing on the bridge from passing vehicular or rail traffic. Such ordinance may also prohibit or regulate fishing from any bridge one mile beyond the corporate limits of the municipality where the board or boards of county commissioners by resolution agree to such prohibition or regulation; provided, however, that the board or boards of county commissioners may upon 30 days' written notice withdraw their respective approval of the municipal ordinance, and that ordinance shall have no further effect within that county's jurisdiction. The ordinance shall provide that signs shall be posted on any bridge where fishing is prohibited or regulated reflecting such prohibition or regulation. In any event, no one may fish from the drawspan of any regularly attended drawbridge.

The police department of the municipality is hereby vested with the jurisdiction and authority to enforce any ordinance passed pursuant to this section.

The authority granted under the provisions of this section shall be subject to the authority of the State Highway Commission to prohibit fishing on any bridge on the State highway system. (1971, c. 690, ss. 2, 3, 6; c. 896, s. 15.)

Editor's Note. — This section was originally codified as subdivision (47) of § 160-200. It was transferred to its present position by Session Laws 1971, c. 896, s. 15, effective Jan. 1, 1972.

§ 160A-303. Removal and disposal of junked and abandoned motor vehicles.—(a) A city may by ordinance prohibit the abandonment of motor vehicles on the public streets or on public or private property within the city, and may enforce any such ordinance by removing and disposing of junked or abandoned motor vehicles according to the procedures prescribed in this section.

(b) A motor vehicle is defined to include all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle. An abandoned motor vehicle is one that:

(1) Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or

(2) Is left on property owned or operated by the city for longer than 24 hours; or

(3) Is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours; or

(4) Is left on any public street or highway for longer than seven days.

A junked motor vehicle is an abandoned motor vehicle that also:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or

(3) Is more than five years old and worth less than fifty dollars ($50.00); or

(4) Does not display a current license plate.

(c) Any junked or abandoned motor vehicle found to be in violation of an ordinance adopted under this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee has declared it to be a health or safety hazard. The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When any junked or abandoned motor vehicle is removed, the city shall give written notice of the removal to the registered owner at his last known address according to the latest registration certificate or certificate of title on file with the Department of Motor Vehicles. The notice shall inform the owner of the possible sale or other disposition that can be made of the vehicle under this section. The owner may regain possession of the vehicle by paying to the city all reasonable costs incidental to the removal and storage.

(d) After holding an unclaimed abandoned motor vehicle for 30 days, the city may sell or dispose of it as provided by this subsection. If the vehicle appears to be worth less than fifty dollars ($50.00), the city shall have it appraised by two disinterested dealers or garagemen, and if the appraisal is less than fifty dollars ($50.00), the city may dispose of the vehicle as a junked motor vehicle as provided by subsection (e) of this section. With the consent of the owner, the city may remove and dispose of any motor vehicle as a junked motor vehicle without regard to the value, condition or age of the vehicle, and without holding it for any prescribed period of time. If the vehicle is worth fifty dollars ($50.00) or more it shall be sold at public auction. Twenty days' written notice of the sale shall be given to the registered owner at his last known address, the holders of all liens of record against the vehicle, and the Department of Motor Vehicles. Any person having an interest in the vehicle may redeem it at any time before the sale by paying all costs accrued to date. The proceeds of the sale shall be paid to the city treasurer who shall pay to the appropriate officers or persons the cost of removal, storage, investigation, sale, and liens in that order. The remainder of the proceeds of sale, if any, shall be paid over to the registered owner, or held by the city for 60 days if the registered owner cannot be located with reasonable diligence. If the owner does not claim the remainder of the proceeds within 60 days after the sale, the funds shall be deposited in the city's general fund and the owner's rights therein shall be forever extinguished. When it receives a city's bill of sale from a purchaser or other person entitled to receive any vehicle disposed of as provided in this subsection, the Department of Motor Vehicles shall issue a certificate of title for the vehicle as required by law.

(e) After holding an unclaimed junked motor vehicle for 15 days, the city may destroy it or sell it at private sale as junk. Within 15 days after final disposition of a junked motor vehicle, the city shall notify the Department of Motor Vehicles that the vehicle has been determined to be a junked motor vehicle and disposed of as such. The notice shall contain as full and accurate a description of the vehicle as can be reasonably determined. Any proceeds from the sale of a junked motor vehicle, after all costs of removal, storage, investigation and sale, and satisfying any liens of record on the vehicle have been deducted therefrom, shall be held by the city for 30 days and paid to the registered owner upon demand. If the owner does not appear to claim the proceeds within 30 days after disposal of the vehicle, the funds shall be deposited in the city's general fund and the owner's rights therein shall be forever extinguished.

(f) No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost, or stolen motor vehicle for disposing of the vehicle as provided in this section.

(g) Nothing in this section shall apply to any vehicle in an enclosed building or any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city. (1965, c. 1156; 1967, cc. 1215, 1250; 1971, c. 698, s. 1.)

Opinions of Attorney General. — Mr. F.L. Hutchinson, Division Engineer, State Highway Commission, 7/24/69 (issued under former § 160-200(44)).

A city may make provision for the removal of motor vehicles abandoned or disabled in its streets so as to promote the free flow of traffic therein. S & R Auto & Truck Serv., Inc. v. City of Charlotte, 268 N.C. 374, 150 S.E.2d 743 (1966) (decided under former § 160-200(44)).

§ **160A-304. Regulation of taxis.**—(a) A city may by ordinance license and regulate all vehicles operated for hire in the city. The ordinance may require that the drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets shall obtain a license or permit from the city. The following factors shall be deemed sufficient grounds for refusing to issue a permit or for revoking a permit already issued:

(1) Conviction of a felony against this State, or conviction of any offense against another state which would have been a felony if committed in this State;

(2) Violation of any federal or State law relating to the use, possession, or sale of intoxicating liquors or narcotic or barbiturate drugs;

(3) Addiction to or habitual use of intoxicating liquors or narcotic or barbiturate drugs;

(4) Violation of any federal or State law relating to prostitution;

(5) Noncitizenship in the United States;
(6) Habitual violation of traffic laws or ordinances.

The ordinance may also require operators and drivers of taxicabs to display prominently in each taxicab, so as to be visible to the passengers, the city taxi permit, the schedule of fares, a photograph of the driver, and any other identifying matter that the council may deem proper and advisable. The ordinance may also establish rates that may be charged by taxicab operators, may limit the number of taxis that may operate in the city, and may grant franchises to taxicab operators on any terms that the council may deem advisable.

(b) When a city ordinance grants a taxi franchise for operation of a stated number of taxis within the city, the holder of the franchise shall report at least quarterly to the council the average number of taxis actually in operation during the preceding quarter. The council may amend a taxi franchise to reduce the number of authorized vehicles by the average number not in actual operation during the preceding quarter, and may transfer the unused allotment to another franchised operator. Such amendments of taxi franchises shall not be subject to G.S. 160A-76. Allotments of taxis among franchised operators may be transferred only by the city council, and it shall be unlawful for any franchised operator to sell, assign, or otherwise transfer allotments under a taxi franchise. (1943, c. 639, s. 1; 1945, c. 564, s. 2; 1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former § 160-200(35) and (36a).

Licensing and Regulation in General.—The legislature has deemed it to be the part of wisdom to delegate to the various municipalities of the State the power to license, regulate, and control the operators and drivers of taxicabs. In the exercise of this delegated power, it is the duty of the municipal authorities, in their sound discretion, to determine what ordinances or regulations are reasonably necessary for the protection of the public or the better government of the town, and when in the exercise of such discretion an ordinance is adopted, it is presumed to be valid, and the courts will not declare it invalid unless it is clearly shown to be so. State v. Stallings, 230 N.C. 252, 52 S.E.2d 901 (1949); Victory Cab Co. v. Shaw, 232 N.C. 138, 59 S.E.2d 573 (1950).

The word "terms" is referable to the covenants to be made and required in connection with the issuance of franchises, rather than to any monetary consideration to be charged therefor. Victory Cab Co. v. Charlotte, 234 N.C. 572, 68 S.E.2d 433 (1951).

The word "terms" is not referable to and does not authorize the assessment and collection of fees by a city or town in consideration for franchise privileges to be granted taxicab operators. Victory Cab Co. v. Charlotte, 234 N.C. 572, 68 S.E.2d 433 (1951).

The word "franchise" denotes a right or privilege conferred by law—a special privilege conferred by government on an individual, natural or corporate, which is not enjoyed by its citizens generally, of common right. Ordinarily the grant of a franchise when accepted and acted on creates a contract which is binding on the grantor and the grantee. Hence, the grant of a franchise contemplates, and usually embraces, express conditions and stipulations as to standards of service, and so forth, which the grantee or holder of the franchise must perform. Victory Cab Co. v. Charlotte, 234 N.C. 572, 68 S.E.2d 433 (1951).

Fee for Franchise.—Subdivision (36a) of former § 160-200 did not authorize a city to impose exactions on taxicabs beyond the limits fixed by § 20-97, subsections (a) and (b). Victory Cab Co. v. Charlotte, 234 N.C. 572, 68 S.E.2d 433 (1951).

Requiring Taxicab Drivers to Wear Distinctive Insignia.—It is not an unlawful, unreasonable, or an arbitrary exercise of the police power which has been delegated to local municipal authorities by the legislature, for a city to require, as a condition incident to the privilege of operating a taxicab on its streets, that the driver of such taxicab shall wear a distinctive cap or other insignia while operating a taxicab, to show that he is a duly licensed taxicab driver. Such a requirement would seem to be reasonable and a protection to the public against unlicensed drivers or operators. State v. Stallings, 230 N.C. 252, 52 S.E.2d 901 (1949).

Requiring Taxicab Operators to Secure Liability Insurance.—An ordinance requiring operators of taxicabs or other motor vehicles for hire to secure liability insurance or enter into bond with personal or corporate surety is a valid exercise of the police power and does not violate the Fourteenth Amendment of the Federal Constitution, the operation of vehicles for gain being a special and extraordinary use of the city's streets, which it has the power to condition by ordinance uniform upon all coming within the classification. Watkins v. Iseley, 209 N.C. 256, 183 S.E. 365 (1936), citing Packard v. Banton, 264 U.S. 140, 44 S. Ct. 257, 68 L. Ed. 596 (1924).

Coverage of Indemnity Bond or Deposit.—An indemnity bond for a taxi corporation did not cover liability for injuries inflicted prior to the execution of the bond. Manheim v. Virginia Surety Co., 215 N.C. 693, 3 S.E.2d 16 (1939).

Where a municipal ordinance required taxicab operators to deposit insurance, surety bonds, or cash or securities, conditioned upon the payment of a final judgment in favor of any person injured by the operation of a cab over the municipal streets, the cash or securities deposited for the operation of cabs under a stipulated trade name, filed with the municipality under an agreement pursuant to the ordinance, did not cover a final judgment for injuries to a garage mechanic from the negligent operation of the cab while on private garage premises. Perrell v. Beaty Service Co., 248 N.C. 153, 102 S.E.2d 785 (1958).

§ 160A-305. Agreements under National Highway Safety Act.—Any city is hereby authorized to enter into agreements with the State of North Carolina and its agencies, and with the federal government and its agencies, to secure the full benefits available to the city under the National Highway Safety Act of 1966, and to cooperate with State and federal agencies, other public and private agencies, interested organizations, and individuals, to effectuate the purposes of the act and subsequent amendments thereof. (1967, c. 1255; 1971, c. 698, s. 1.)

§ 160A-306. Building setback lines.—(a) A city shall have authority to (i) classify all or a portion of the streets in the city according to their size, present and anticipated traffic loads, and other characteristics relevant to the achievement of the purposes of this section, and (ii) establish by ordinance minimum distances that buildings and other permanent structures constructed along each class or type of street shall be set back from the right-of-way line or the center line of the street. Portions of any street may be classified in a manner different from other portions of the same street where the characteristics of the portions differ.

(b) Any setback line shall be designed

(1) To promote the public safety by providing adequate sight distances for persons using the street and its sidewalks, lessening congestion in the street and sidewalks, facilitating the safe movement of vehicular and pedestrial traffic on the street and sidewalks and providing adequate fire lanes between buildings, and

(2) To protect the public health by keeping dwellings and other structures an adequate distance from the dust, noise, and fumes created by traffic on the street and by insuring an adequate supply of light and air.

(c) A setback-line ordinance shall permit affected property owners to appeal to the council for variance or modification of setback requirements as they apply to a particular piece of property. The council may vary or modify the requirements upon a showing that

(1) The peculiar nature of the property results in practical difficulties or unnecessary hardships that impede carrying out the strict letter of the requirement,

(2) The property will not yield a reasonable return or cannot be put to reasonable use unless relief is granted, and

(3) Balancing the public interest in enforcing the setback requirements and the interest of the owner, the grant of relief is required by considerations of justice and equity.

In granting relief, the council may impose reasonable and appropriate conditions and safeguards to protect the interest of neighboring properties. The council may delegate authority to hear appeals under setback-line ordinances to a board established to hear appeals under zoning ordinances. If this is done, appeal to the council from the board shall be governed by the same laws and rules as appeals from decisions granting or denying variances or modifications under the zoning ordinance. (1971, c. 698, s. 1.)

§ **160A-307. Curb cut regulations.**—A city may by ordinance regulate the size, location, and manner of construction of driveway connections into any street or alley. (1971, c. 698, s. 1.)

§§ **160A-308 to 160A-310:** Reserved for future codification purposes.

ARTICLE 16.

Public Enterprises.

Part 1. General Provisions.

§ **160A-311. Public enterprise defined.**—As used in this Article, the term "public enterprise" includes:

(1) Electric power generation, transmission, and distribution systems;
(2) Water supply and distribution systems;
(3) Sewage collection and disposal systems;
(4) Gas distribution systems;
(5) Bus lines and mass transit systems;
(6) Solid waste collection and disposal systems and facilities;
(7) Cable television systems;
(8) Off-street parking facilities and systems;
(9) Airports. (1971, c. 698, s. 1.)

§ **160A-312. Authority to operate public enterprises.**—A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, and operate any or all of the public enterprises as defined in this Article to furnish services to the city and its citizens. Subject to Part 2 of this Article, a city may extend and operate any public enterprise outside its corporate limits within reasonable limitations, but in no case shall a city be held liable for damages to those outside the corporate limits for failure to furnish any public enterprise service. A city shall have full authority to protect and regulate any public enterprise system belonging to it by adequate and reasonable rules and regulations. (1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former similar provisions.

Electricity May Be Distributed beyond Corporate Limits.—A municipality has the power to purchase, generate, or distribute electricity for its own use and the use of its inhabitants and is given legislative authority to extend its lines beyond its corporate limits for the purpose of selling electricity to nonresidents, and therefore a complaint in an action against a municipality alleging injury from negligent maintenance of power lines outside the corporate limits is not demurrable on the ground that the alleged negligence of its officers and employees was ultra vires of the city. Kennerly v. Dallas, 215 N.C. 532, 2 S.E.2d 538 (1939).

A municipal corporation engaged in the production and distribution of electric power is authorized to extend this service to consumers outside its corporate limits. This would confer authority on a city to construct and operate transmission lines for the distribution of electric current for the benefit of the public beyond its corporate boundaries within reasonable limitation. Grimesland v. Washington, 234 N.C. 117, 66 S.E.2d 794 (1951).

But having the right to engage in this business gives no exclusive franchise, and if from lawful competition the town's business be curtailed, it would seem that no actionable wrong would result, nor would it be entitled to injunctive relief therefrom. Grimesland v. Washington, 234 N.C. 117, 66 S.E.2d 794 (1951).

Certainly, nothing is more necessary to the health of a city than that its filth should be removed and its area well drained. That the establishment of a public sewer system is an exercise of a governmental function is recognized by all the authorities. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

City May Impose Conditions on Residents outside Corporate Limits. — "Since it is optional with the city as to whether or not it will furnish water to residents outside its corporate limits and permit such residents to connect their sewer facilities with the sewerage system of the city, or with any other sewerage system which connects with the city system, it may fix the terms upon which the service may be rendered and its facilities used. Williamson v. High Point, 213 N.C. 96, 195 S.E. 90 (1938); Kennerly v. Dallas, 215 N.C. 532, 2 S.E.2d 538 (1939); George v. Asheville, 80 F.2d 50, 103 A.L.R. 568 (1935)." Atlantic Constr. Co. v. Raleigh, 230 N.C. 365, 53 S.E.2d 165 (1949).

A municipality which operates its own waterworks is under no duty in the first instance to furnish water to persons outside its limits. It has the discretionary power, however, to engage in this undertaking. When a municipality exercises this discretionary power, it does not assume the obligations of a public service corporation toward nonresident. consumers. It retains the authority to specify the terms upon which nonresidents may obtain its water. Fulghum v. Selma, 238 N.C. 100, 76 S.E.2d 368 (1953).

All municipalities have been given the right to extend water and sewer facilities beyond the corporate limits of the municipality. Upchurch v. Raleigh, 252 N.C. 676, 114 S.E.2d 772 (1960).

Municipalities have legislative permission to extend their sewer and water lines beyond corporate boundaries. Such extensions may be made either because necessary to the effective operation of the improvement within the city, or to provide services for a profit beyond the corporate limits. Eakley v. Raleigh, 252 N.C. 683, 114 S.E.2d 777 (1960).

But the authority granted is not unlimited. It authorizes a municipality to construct and operate utilities for the benefit of the public beyond its corporate boundaries within reasonable limitations. If the authority was not thus limited this section would contravene fundamental law. Public Service Co. v. Shelby, 252 N.C. 816, 115 S.E.2d 12 (1960).

Extension for Profit Requires Vote.—A municipality has the power to expend funds for the construction and operation of water and sewer facilities without a vote when such facilities are for the benefit of the citizens of the municipality, but extension of such facilities outside its corporate limits for the purpose of profit is a proprietary function requiring a vote of its citizens. Eakley v. Raleigh, 252 N.C. 683, 114 S.E.2d 777 (1960).

Municipality Owes Duty of Equal Service Only to Consumers within Its Limits. — When a municipality engages in supplying water to its inhabitants, it owes the duty of equal service in furnishing water only to consumers within its corporate limits. Fulghum v. Selma, 238 N.C. 100, 76 S.E.2d 368 (1953).

A municipality owes no duty to supply water to a resident for resale to others either within or without its limits. Fulghum v. Selma, 238 N.C. 100, 76 S.E.2d 368 (1953).

Liability for Failure to Furnish Service. —A city which owns a municipal light and waterworks system and operates the same in its governmental capacity cannot be held liable in damages for failure to furnish a sufficient supply of either water or light. Harrington v. Greenville, 159 N.C. 632, 75 S.E. 849 (1912); Howland v. Asheville, 174 N.C. 749, 94 S.E. 524 (1917); Mabe v. Winston-Salem, 190 N.C. 486, 130 S.E. 169 (1925).

Construction of a sewerage system is a governmental function. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

And Municipality Is Not Liable for Personal Injuries Resulting from Construction. —A municipal corporation is performing a governmental function when engaged in construction of a sewerage system and is not liable for personal injuries resulting from the alleged negligent acts of its employees in such construction, notwithstanding the municipality charges for sewage and sanitary services which it furnishes its citizens. A municipality will not lose its governmental immunity solely because it is engaged in an activity which makes a profit, the test being whether the act is for the common good of all without the element of special corporate benefit or pecuniary profit. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

A municipality cannot be required to respond in damages for personal injuries resulting from the alleged negligent acts of its employees in the construction of a sewer line. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

Or for Injuries to Health Resulting from Maintenance. — In the construction and maintenance of a sewer or drainage system, a municipal corporation exercises a part of the governmental powers of the State for the customary local convenience and benefit of all the people, and in the exercise of these discretionary functions the municipality cannot be required to respond in damages to individuals for injury to health, resulting either from omissions to act or the mode of exercising the power conferred on it for public purposes to be used at discretion for the public good. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

The maintenance of a free public sewer system by a city is an exercise of its police power for the public benefit, so that a city would not be liable for the death of a citizen from illness caused by the pollution of a stream by the sewer which emptied into it. Metz v. Asheville, 150 N.C. 748, 64 S.E. 881, 22 L.R.A. (n.s.) 940 (1909).

Recovery for illness or death resulting from the negligent maintenance of sewerage systems has been specifically denied and evidence with respect thereto admitted only for purpose of proving existence of a nuisance. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

But Recovery Has Been Allowed for Damages to Property.—In actions brought to recover damages for injury to property and person by reason of the alleged negligent maintenance of a sewerage system, recovery has been allowed for damage to property on the theory of the creation of a nuisance and the taking of property. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

On Theory of Nuisance. — A municipal corporation, empowered to construct and maintain a sewerage system, may not exercise its power in such a way as to create a private nuisance without making compensation for the injury inflicted or being liable in damages therefor or to equitable restraint in a proper case, and it is a nuisance to pollute a stream by emptying sewage therein. Moser v. Burlington, 162 N.C. 141, 78 S.E. 74 (1913).

Sewer Excavations Not Attractive Nuisance.—Municipalities must build sewers and other conduits necessitating the making of excavations. This creates some obvious danger, but it is not categorized as an attractive nuisance. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

An ordinance for fluoridation of the city water supply is enacted in the exercise of public policy, and the courts will not interfere therewith in the absence of a showing that the ordinance is so unreasonable, oppressive, and subversive as to amount to an abuse rather than a legitimate exercise of the legislative power. Stroupe v. Eller, 262 N.C. 573, 138 S.E.2d 240 (1964).

The bare extension of the city limits does not amount to a wrongful taking or appropriation of the lines. Covington v. City of Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

Where there is no contract or municipal ordinance involved and the territory served by private water or sewer lines is annexed to a municipality, the owner of the lines may not recover the value thereof from the municipality unless it appropriates them and controls them as proprietor. Covington v. City of Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

Nor Does Voluntary Maintenance by City.—Maintenance as a voluntary act on the part of the city does not amount to a taking of the property. Covington v. City of Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

§ 160A-313. Financing public enterprise.—Subject to the restrictions, limitations, procedures, and regulations otherwise provided by law, a city shall have full authority to finance the cost of any public enterprise by levying taxes, borrowing money, and appropriating any other revenues therefor, and by accepting and administering gifts and grants from any source on behalf thereof. (1971, c. 698, s. 1.)

§ 160A-314. Authority to fix and enforce rates.—(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

(b) A city shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the city to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Except as provided in subsection (d), rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served.

(d) Rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.

(2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system.

(e) Nothing in this section shall repeal any portion of any city charter inconsistent herewith. (1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former similar provisions.

A municipality may establish a charge for sewerage service and require all its water customers to pay for such service whether such customers live within or without the corporate limits of such municipality. Covington v. City of Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

And Such Charge Is Not in the Nature of a Tax.—A properly adopted ordinance of a municipality establishing a sewerage service charge is not in the nature of a tax for the use of the users' sewer facilities, but it is a charge for the use of the sewer facilities of the municipality in the disposal of polluted water and sewage which drains into the disposal system of the municipality. Covington v. City of Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

Rates Charged Consumers outside Corporate Limits.—An amendment to an ordinance which substantially increases the rates charged for water supplied by a municipality for consumption outside its corporate limits cannot be held discriminatory in a legal sense when it applies alike to all nonresidents, and it is immaterial that a nonresident consumer deems such rates exorbitant or unreasonable. Fulghum v. Selma, 238 N.C. 100, 76 S.E.2d 368 (1953).

A city is free to establish by contract or by ordinance such fees and charges for services rendered to residents outside its corporate limits as it may deem reasonable and proper. Atlantic Constr. Co. v. Raleigh, 230 N.C. 365, 53 S.E.2d 165 (1949).

§ 160A-315. Billing and collecting agents for certain sewer systems.—Any city that maintains and operates a sewage collection and disposal system but does not maintain and operate a water distribution system is authorized to contract with the owner or operator of the water distribution system operating within the area served by the city sewer system to act as the billing and collection agent of the city for any charges, rents, or penalties imposed by the city for sewer services. (1933, c. 322, s. 1; 1941, c. 106; 1961, c. 1074; 1971, c. 698, s. 1.)

§ 160A-316. Independent water companies to supply information.—The owner or operator of any independent or private water distribution system operating within a city that maintains and operates a sewage collection and disposal system shall furnish to the city upon request copies of water meter readings and any other water consumption records and data that the city may require to bill and collect its sewer rents and charges. The city shall pay the reasonable cost of supplying this information. (1933, c. 322, s. 1; 1941, c. 106; 1961, c. 1074; 1971, c. 698, s. 1.)

§ 160A-317. Power to require connections.—A city may require the owners of improved property located within the city limits and upon or within a reasonable distance of any water line or sewer collection line owned and operated by the city to connect his premises with the water or sewer system or both, and may fix charges for the connections. (1917, c. 136, sub-ch. 7, s. 2; C. S., s. 2806; 1971, c. 698, s. 1.)

Section Does Not Apply to Property Located outside City.—A municipality is not authorized to compel owners of improved property located outside the city, but which may be located upon or near one of its sewer lines, or a line which empties into the city's sewerage system, to connect with the sewer line. Atlantic Constr. Co. v. Raleigh, 230 N.C. 365, 53 S.E.2d 165 (1949); Smith v. Winston-Salem, 247 N.C. 349, 100 S.E.2d 835 (1957) (decided under former § 160-240).

§ **160A-318. Mutual aid contracts.**—(a) Any two or more cities, counties, water and sewer authorities, metropolitan sewage districts, sanitary districts, or private utility companies or combination thereof may enter into contracts with each other to provide mutual aid and assistance in restoring electric, water, sewer, or gas services in the event of natural disasters or other emergencies under such terms and conditions as may be agreed upon. Mutual aid contracts may include provisions for furnishing personnel, equipment, apparatus, supplies and materials; for reimbursement or indemnification of the aiding party for loss or damage incurred by giving aid; for delegating authority to a designated official or employee to send aid upon request; and any other provisions not inconsistent with law.

(b) Officials and employees furnished by one party in aid of another party pursuant to a mutual aid contract entered into under authority of this section shall be conclusively deemed for all purposes to remain officials and employees of the aiding party. While providing aid to another and while traveling to and from another city or county pursuant to giving aid, they shall retain all rights, privileges, and immunities, including coverage under the North Carolina Workmen's Compensation Act, as they enjoy while performing their normal duties.

(c) Notwithstanding any other provisions of law to the contrary, any party to a mutual aid contract entered into under authority of this section, may sell or otherwise convey or deliver to another party to the contract personal property to be used in restoring utility services pursuant to the contract, without following procedures for the sale or disposition of property prescribed by any general law, local act, or city charter.

(d) Nothing in this section shall be construed to deprive any party to a mutual aid contract of its discretion to send or decline to send its personnel, equipment, and apparatus in aid of another party to the contract under any circumstances, whether or not obligated by the contract to do so. In no case shall a party to a mutual aid contract or any of its officials or employees be held to answer in any civil or criminal action for declining to send personnel, equipment, or apparatus to another party to the contract, whether or not obligated by contract to do so. (1967, c. 450; 1971, c. 698, s. 1.)

§ **160A-319. Utility franchises.**—A city shall have authority to grant upon reasonable terms franchises for the operation within the city of any of the enterprises listed in G.S. 160A-311. No franchise shall be granted for a period of more than 60 years, and cable television franchises shall not be granted for a period of more than 20 years. Except as otherwise provided by law, upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise.

For the purposes of this section, "cable television system" means any system or facility that, by means of a master antenna and wires or cables, or by wires or cables alone, receives, amplifies, modifies, transmits, or distributes any television, radio, or electronic signal, audio or video or both, to subscribing members of the public for compensation. "Cable television system" does not include providing master antenna services only to property owned or leased by the same person, firm, or corporation, nor communication services rendered to a cable television system by a public utility that is regulated by the North Carolina Utilities Commission or the Federal Communications Commission in providing those services. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978;

P. L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1.)

Editor's Note. — The cases cited in the following note were decided under former similar provisions.

Every town has the power to grant franchises to public utilities, that is, the right to engage within the corporate boundaries in business of a public nature. Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N.C. 596, 117 S.E.2d 812 (1961).

The sovereign right to franchise implies the power to control for public benefit, including among other things, the right to fix reasonable rates and to specify where the franchise may or may not be exercised so as to afford adequate service to the public. Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N.C. 596, 117 S.E.2d 812 (1961).

Discretion of Local Body.—The terms and conditions upon which franchises to public utilities are to be granted, unless clearly unreasonable or expressly prohibited by law, rests in the sound discretion of the local body. Mullen v. Louisburg, 225 N.C. 53, 33 S.E.2d 484 (1945).

Grant of Right to Construct City-Wide Television Cable System.—The grant by a city to a person, firm or corporation of the right to construct a city-wide television cable system of towers, poles, cables, wires, and other apparatus in, along, and over its streets and other public ways and to operate such systems for the profit of the grantee is clearly a franchise, for it is the grant of a right not held by all persons in common and which may be granted only by the act of the sovereign or its authorized agent. Kornegay v. City of Raleigh, 269 N.C. 155, 152 S.E.2d 186 (1967).

No grant of franchise by a city is deemed exclusive unless so expressed by the grant. Hill v. Elizabeth City, 291 F. 194 (1923).

A franchise need not be exclusive. Indeed, if it is exclusive, an additional question as to its validity arises under N.C. Const., Art. I, §§ 32 and 34. Kornegay v. City of Raleigh, 269 N.C. 155, 152 S.E.2d 186 (1967).

Exclusive Privilege Unconstitutional.—Those provisions of an ordinance granting the exclusive privilege to construct and maintain waterworks within the corporate limits of a town, and the exclusive use of its streets, alleys, sidewalks, public grounds, streams and bridges, come within the confirmation of N.C. Const., Art. I, § 34, which declares that "perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed." Thrift v. Elizabeth City, 122 N.C. 31, 30 S.E. 349 (1898).

Statutory Term Read into Contract.—Where a franchise granted by a municipality fails to stipulate a term, the statutory term of 60 years will be read into the contract as a part thereof. Boyce v. Gastonia, 227 N.C. 139, 41 S.E.2d 355 (1947).

City Must Follow Procedural Restrictions of Charter.—Where the charter of a city provides procedural restrictions upon the granting by the city of franchises, such city must follow such procedural restrictions of its charter in granting a franchise regardless of whether the authority to grant the particular franchise is conferred upon the city by this section or by its own charter. Shaw v. City of Asheville, 269 N.C. 90, 152 S.E.2d 139 (1967).

In Granting Franchise Municipality Exercises Governmental Function. — In the granting of a franchise to a public utility to operate a system for furnishing gas for cooking and heating to residents of the municipality, the municipality exercises a governmental function, and may not be held liable in tort to a person injured by a gas explosion, even if it be conceded that the city was negligent in continuing the franchise after the pipe lines and equipment of the licensee had become defective. Denning v. Goldsboro Gas Co., 246 N.C. 541, 98 S.E.2d 910 (1957).

Franchises for Use of Streets Must Be Expressly Conferred. — The law is well settled that the title either of the fee in the soil or an easement is vested in the municipality, in trust for the use of the people as and for a public highway, and that it cannot, without legislative authority, divert them from this use. Therefore, a grant by a city of a franchise allowing gas pipes to be laid in its streets is void unless allowed by express legislation. Elizabeth City v. Banks, 150 N.C. 407, 64 S.E. 189 (1909).

Duty Imposed with Franchise to Water Company.—The acceptance of a municipal franchise by a water company carries with it the duty of supplying water to all persons along the lines of its mains without discrimination and at uniform rates. Griffin v. Goldsboro Water Co., 122 N.C. 206, 30 S.E. 319 (1898).

A water company operating under a franchise-contract from a city or town, and receiving the benefits and advantages arising thereunder, may not repudiate the duty of supplying water free to public schools, etc., which it had expressly contracted to do in accepting the franchise containing such provision and collect for water it had furnished them upon a quantum meruit or otherwise. Henderson Water Co. v. Trustees, 151 N.C. 171, 65 S.E. 927 (1909).

Rights of Abutting Owners.—As against the rights of abutting owners the municipal authorities have no power to grant to a railroad company an easement to lay its track upon and operate its trains over the streets of a town, even though the title to the streets be in the town. Staton v. Atlantic Coast Line R. Co., 147 N.C. 428, 61 S.E. 455 (1908).

License Not a Permanent Easement.—A license granted by a city to a railroad company to lay a track upon and to that extent use the streets, in the absence of an express power in the charter to do so, such license cannot be construed into a grant of a permanent easement. State v. Atlantic & N.C.R. Co., 141 N.C. 736, 53 S.E. 290 (1906).

Power to Annul License. — After a city, by ordinance, has granted a street railroad a right to construct its line over certain streets it cannot by subsequent ordinance arbitrarily annul such license. Asheville St. Ry. Co. v. Asheville, 109 N.C. 688, 14 S.E. 316 (1891).

§ **160A-320:** Reserved for future codification purposes.

§ **160A-321. Sale, lease, or discontinuance of city-owned enterprise.**—A city is authorized to sell or lease as lessor any enterprise that it may own upon any terms and conditions that the council may deem best. However, a city-owned enterprise shall not be sold, leased to another, or discontinued unless the proposal to sell, lease, or discontinue is first submitted to a vote of the people and approved by a majority of those who vote thereon. Voter approval shall not be required for the sale, lease, or discontinuance of airports, off-street parking systems and facilities, or solid waste collection and disposal systems. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P. L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, § 1; 1969, c. 944; 1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former similar provisions.

When Approval of Voters Not Required.—Where a municipality decides to abandon the generation of electricity by the use of Diesel engines and substitute therefor electricity purchased wholesale for distribution through its electric plant, and in pursuance of such change of policy advertises a sale of Diesel engines, there is no sale by such municipality of its electric plant requiring approval of a majority of the qualified voters. Mullen v. Louisburg, 225 N.C. 53, 33 S.E.2d 484 (1945).

Private Sale.—See Allen v. Reidsville, 178 N.C. 513, 101 S.E. 267 (1919).

§ **160A-322. Contracts for electric power and water.**—A city is authorized to enter into contracts for a period not exceeding 40 years for the supply of water, and for a period not exceeding 30 years for the supply of electric power or other public commodity or services. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P. L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1.)

§§ **160A-323 to 160A-330:** Reserved for future codification purposes.

Part 2. Electric Service in Urban Areas.

§ **160A-331. Definitions.**—Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

(1) The "determination date" is
   a. April 20, 1965, with respect to areas within the corporate limits of any city as of April 20, 1965;

b. The effective date of annexation with respect to areas annexed to any city after April 20, 1965;

c. The date a primary supplier comes into being with respect to any city first incorporated after April 20, 1965.

(2) "Line" means any conductor located inside the city for distributing or transmitting electricity, other than

a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises, and

b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.

(3) "Premises" means the building, structure, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and are used by one electric consumer for commerical, industrial, institutional, or governmental purposes, shall together constitute one "premises," except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one "premises" if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

(4) "Primary supplier" means a city that owns and maintains its own electric system, or a person, firm, or corporation that furnishes electric service within a city pursuant to a franchise granted by, or contract with, a city, or that, having furnished service pursuant to a franchise or contract, is continuing to furnish service within a city after the expiration of the franchise or contract.

(5) "Secondary supplier" means a person, firm, or corporation that furnishes electricity at retail to one or more customers other than itself within the limits of a city but is not a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§ **160A-332. Electric service within city limits.**—(a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date (as defined in G.S. 160A-331(1)) shall have rights and be subject to restrictions as follows:

(1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.

(2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet

of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.

(3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.

(4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), and (3) of this section, except with the written consent of the secondary supplier.

(5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(7) Except as provided in subdivisions (1), (2), (3), (5), and (6) of this section, a secondary supplier shall not furnish electric service within the corporate limits of any city unless it first obtains the written consent of the city and the primary supplier.

(b) In any city that is first incorporated after April 20, 1965, in which, on the effective date of the incorporation, there is more than one supplier of electric service, all suppliers of electric service therein shall continue to have the rights and be subject to the restrictions in effect before the city was incorporated until there is a primary supplier within the city. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§ **160A-333. Temporary electric service.** — No electric supplier shall furnish temporary electric service for the construction of premises which it would not have the right to serve under this Part if such premises were already constructed. The construction of lines for, and the furnishing of, temporary electric service for the construction of premises which any other electric supplier, if chosen by the consumer, would have the right to serve if such premises were already constructed, shall not impair the right of such other electric supplier to furnish services to such premises after the construction thereof, if then chosen by the consumer; nor, unless the consumer chooses to have such premises served by the supplier that furnished the temporary service, shall the furnishing of such temporary service or the construction of a line therefor impair the right of any other electric supplier to furnish service to any other premises which, without regard to the construction of such temporary service line, it has the right to serve. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§ **160A-334. Authority and jurisdiction of Utilities Commission.**—Notwithstanding G.S. 160A-332 and 160A-333, the North Carolina Utilities Commission shall have authority and jurisdiction, after notice to the affected electric supplier, and after hearing, if a hearing is requested by any interested party, to:

(1) Order a primary supplier that is subject to the jurisdiction of the Commission to furnish electric service to any consumer who desires service from the primary supplier at any premises served by a secondary supplier, or at premises which a secondary supplier has the right to serve pursuant to other sections of this Part, and to order such secondary supplier to cease and desist from furnishing electric service to such premises, or

(2) Order any secondary supplier to cease and desist from furnishing electric service to any premises being served by it or to any premises which it has the right to serve pursuant to other sections of this Part, if the consumer desires service from a primary supplier that is not subject to the jurisdiction of the Commission and which is willing to furnish service to such premises, if the Commission finds that service being furnished to or to be furnished to the consumer by a secondary supplier is or will be inadequate or undependable, or that the rates, conditions of service regulations, applied to such consumer, are unreasonably discriminatory. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§ **160A-335. Discontinuance of service and transfer of facilities by secondary supplier.**—A secondary supplier may voluntarily discontinue its service to any premises and remove any of its electric facilities located inside the corporate limits of a city or sell and transfer such facilities to a primary supplier in such city, subject to approval by the North Carolina Utilities Commission, if the Commission determines that the public interest will not thereby be adversely affected. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§ **160A-336. Electric service for city facilities.**—No provisions of this Part shall prevent a city that is a primary supplier from furnishing its own electric service for city facilities, or prevent any other primary supplier from furnishing electric street lighting service to a city inside its corporate limits. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§ **160A-337. Effect of Part on rights and duties of primary supplier.**—Except for the rights granted to and restrictions upon primary suppliers contained in the provisions of this Part, nothing in this Part shall diminish, enlarge, alter, or affect in any way the rights and duties of a primary supplier to furnish electric service to premises within the corporate limits of a city. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§ **160A-338. Electric suppliers subject to police power.**—No provisions of this Part shall restrict the exercise of the police power of a city over the erection and maintenance of poles, wires, and other facilities of electric suppliers in streets, alleys, and other public ways. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§§ **160A-339, 160A-340**: Reserved for future codification purposes.

Article 17.

Cemeteries.

§ **160A-341. Authority to establish and operate cemeteries.** — A city shall have authority to establish, operate, and maintain cemeteries either inside or outside its corporate limits, may acquire and hold real and personal property for cemetery purposes by gift, purchase, or (for real property) by exercise of the power of eminent domain, may devote any property owned by the city to use as a cemetery, may prohibit burials at any place within the city other than city cemeteries, and may regulate the manner of burial in city cemeteries. Nothing in this section shall confer upon any city authority to prohibit or regulate burials in cemeteries licensed by the State Burial Association Commissioner, or in church cemeteries.

As used in this Article "cemetery" includes columbariums and facilities for cremation. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1969, c. 402; 1971, c. 698, s. 1.)

Editor's Note.—The following cases were decided under former § 160-2(3).

City's Power over Interment. — The ownership of a lot in a cemetery, or license to inter therein, is subject to the police power of the State, and interments may be forbidden, and bodies already interred removed, by ordinance of the city, if authorized by act of the legislature. Humphrey v. Board, 109 N.C. 132, 13 S.E. 793 (1891).

Ordinance Not Authorized.—Subsection (3) of former § 160-2 did not impliedly authorize a town to enact an ordinance reserving to the town the exclusive right to set memorial markers in cemeteries and requiring the payment of a special charge for setting such markers not purchased from the town. Grave constitutional questions would be raised by any statute giving a town such authority. State v. McGraw, 249 N.C. 205, 105 S.E.2d 659 (1958).

§ 160A-342. Authority to transfer cemeteries. — A city may transfer and convey any city cemetery property, together with any accumulated perpetual care trust funds set aside for the maintenance of the cemetery, to any religious organization or cemetery licensed by the State Burial Association Commissioner, upon condition that the transferee will continue use of the property as a cemetery, will perpetually maintain it, and will apply any perpetual care trust funds so transferred only for maintenance of the cemetery. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1969, c. 402; 1971, c. 698, s. 1.)

§ 160A-343. Authority to abandon cemeteries.—A city shall have authority to abandon any cemetery that has not been used for interment purposes within 10 years. Upon abandonment, all monuments, tombstones, and the contents of all graves within the cemetery shall be transferred at city expense to another city cemetery, or to a cemetery licensed by the State Burial Association Commissioner. After the transfer of monuments, tombstones, and the contents of graves, the city may take possession of, convey, or use the former cemetery property for any lawful purpose. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1969, c. 402; 1971, c. 698, s. 1.)

§ 160A-344. Authority to assume control of abandoned cemeteries.—(a) Whenever property not under the control or in the possession of any church or religious organization in any city has been heretofore set aside or used for cemetery purposes, and the trustees or owners named in the deed or deeds for the property have died, or are unknown, or the deeds of conveyance have been lost or misplaced and no record of title thereto has been found, and the property has been occupied and used for burial purposes for a time sufficient to identify its use as cemetery property, the city in which the cemetery is located is authorized to take possession of the land and any adjoining land not held by known claimants of title, have the property surveyed and lines established, and to designate and appropriate the property as a city cemetery.

(b) The city may have the land subdivided and laid off into family burial plots, may sell any of the unused lots so laid off to any person for burial purposes, and may use the proceeds of the sale for the improvement and upkeep of the cemetery.

(c) The city may appropriate and use funds for the improvement and maintenance of the cemetery, and all laws and ordinances applicable to city cemeteries shall apply to the cemetery from and after the date that the city assumes control of it. (1971, c. 698, s. 1.)

§ **160A-345. Authority to condemn cemeteries.**—A city shall have authority to acquire title in fee simple by purchase or exercise of the power of eminent domain to any cemetery, graveyard, or burial place within the city and to operate and maintain the property so acquired as a city cemetery. This section shall not apply to a cemetery licensed by the North Carolina State Burial Association Commissioner, nor to property owned or controlled by any church or religious organization, unless the owner of the property consents to the acquisition. (1951, c. 385, s. 1; 1971, c. 698, s. 1.)

§ **160A-346. Authority to condemn easements for perpetual care.**—A city shall have authority to acquire an easement for perpetual care by gift, grant, purchase, or exercise of the power of eminent domain in any cemetery, graveyard, or burial place within the city. When a perpetual care easement is acquired under this section, all city ordinances concerning the care and upkeep of city cemeteries shall be applicable to the cemetery, and the income from city perpetual care trust funds may be used to care for and maintain the cemetery. This section shall not apply to a cemetery licensed by the North Carolina State Burial Association Commissioner or to property owned or controlled by any church or religious organization unless the owner of the property consents to the acquisition. (1951, c. 385, s. 2; 1971, c. 698, s. 1.)

§ **160A-347. Perpetual care trust funds.**—(a) A city is authorized to create a perpetual care trust fund for any cemeteries under its ownership or control, to accept gifts, grants, bequests, and devises on behalf of the perpetual care trust fund, to deposit any revenues realized from the sale of lots in or the operation of city cemeteries in the perpetual care trust fund, and to hold and administer the trust fund for the purpose of perpetually caring for and beautifying the city's cemeteries. The city may make contracts with the owners of plots in city cemeteries obligating the city to maintain the plots in perpetuity upon payment of such sums as the council may fix.

(b) The principal of perpetual care trust funds shall be held intact, and the income from such funds shall be used to carry out contracts with plot owners for the perpetual care of the plots, and to maintain and perpetually care for the cemetery.

(c) Perpetual care trust funds shall be kept separate and apart from all other city funds, and shall in no case be appropriated by, lent to, or in any manner used by the city for any purpose other than the perpetual care of city cemeteries. (1917, c. 136, sub-ch. 9, s. 1; C. S., ss. 2810, 2811, 2812; 1927, c. 254; 1971, c. 698, s. 1.)

§ **160A-348. Regulation of city cemeteries.**—A city may by ordinance adopt rules and regulations concerning the opening of graves, the erection of tombstones and monuments, the building of walls and fences, the hours of opening and closing and all other matters concerning the use, operation, and maintenance of city cemeteries. The ordinance may impose a schedule of prices for lots and fees for the opening of graves in the cemetery, but it may not require the owners of plots to purchase monuments, vaults, or other items from the city. (1971, c. 698, s. 1.)

§ **160A-349:** Reserved for future codification purposes.

ARTICLE 18.

Parks and Recreation.

§ **160A-350. Short title.**—This Article shall be known and may be cited as the "Recreation Enabling Law." (1945, c. 1052; 1971, c. 698, s. 1.)

Construction of Swimming Pool Is Public Purpose.—While the construction of a swimming pool as a part of a city's recreation system may not be financed as a necessary expense of government under our constitutional limitation, N.C. Const., Art. V, § 4, without a vote of the people, nevertheless, such a facility is a public purpose. Greensboro v. Smith, 239 N.C. 138, 79 S.E.2d 486 (1954) (decided prior to the enactment of this Article).

§ 160A-351. Declaration of State policy.—The lack of adequate recreational programs and facilities is a menace to the morals, happiness, and welfare of the people of this State. Making available recreational opportunities for citizens of all ages is a subject of general interest and concern, and a function requiring appropriate action by both State and local government. The General Assembly therefore declares that the public good and the general welfare of the citizens of this State require adequate recreation programs, that the creation, establishment, and operation of parks and recreation programs is a proper governmental function, and that it is the policy of North Carolina to forever encourage, foster, and provide these facilities and programs for all its citizens. (1945, c. 1052; 1971, c. 698, s. 1.)

§ 160A-352. Recreation defined.—"Recreation" means activities that are diversionary in character and aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural development and leisure time experiences. (1945, c. 1052; 1971, c. 698, s. 1.)

§ 160A-353. Powers. — In addition to any other powers it may possess to provide for the general welfare of its citizens, each county and city in this State shall have authority to:

(1) Establish and conduct a system of supervised recreation;
(2) Set apart lands and buildings for parks, playgrounds, recreational centers, and other recreational programs and facilities;
(3) Acquire real property, including water and air rights, for parks and recreation programs and facilities by gift, grant, purchase, lease, exercise of the power of eminent domain, or any other lawful method;
(4) Provide, acquire, construct, equip, operate, and maintain parks, playgrounds, recreation centers, and recreation facilities, including all buildings, structures, and equipment necessary or useful in connection therewith;
(5) Appropriate funds to carry out the provisions of this Article;
(6) Accept any gift, grant, lease, loan, bequest, or devise of real or personal property for parks and recreation programs. Devises, bequests, and gifts may be accepted and held subject to such terms and conditions as may be imposed by the grantor or trustor, except that no county or city may accept or administer any terms that require it to discriminate among its citizens on the basis of race, sex, or religion. (1945, c. 1052; 1971, c. 698, s. 1.)

Dedication for Recreation Facilities Is for Public Purpose.—The power of cities to dedicate real property for use as recreation centers and for other recreational purposes was expressly conferred by former § 160-156, and the exercise of this power was in the public interest and for a public purpose. Brumley v. Baxter, 225 N.C. 691, 36 S.E.2d 281, 162 A.L.R. 930 (1945), citing White v. Charlotte, 209 N.C. 573, 183 S.E. 730 (1936); Atkins v. Durham, 210 N.C. 295, 186 S.E. 330 (1936).

Issuance of Bonds.—Municipal corporations were given authority by former §§ 160-156, 160-200(12), and 160-229, to establish parks and playgrounds necessary to the maintenance of the health of their inhabitants, and an ordinance of a populous industrial city which provides for the issuance of bonds to establish and maintain parks and playgrounds for the children of the city was held a valid exercise of its police power under legislative authority for the promotion of the public health, safety, and morals. Atkins v. Durham, 210 N.C. 295, 186 S.E. 330 (1936).

Abandonment of Public Park.—The authority to acquire, establish, and regulate parks conferred by former § 160-200(12) did not give a municipality the power to abandon an established public park. Wishart v. Lumberton, 254 N.C. 94, 118 S.E.2d 35 (1961).

§ 160A-354. Administration of parks and recreation programs.—A city or county may operate a parks and recreation system as a line department, or it may create a parks and recreation commission and vest in it authority to operate the parks and recreation system. (1945, c. 1052; 1971, c. 698, s. 1.)

§ 160A-355. Joint parks and recreation systems.—Any two or more units of local government may cooperate in establishing parks and recreation systems as authorized in Article 20, Part 1, of this Chapter. (1945, c. 1052; 1967, c. 1228; 1971, c. 698, s. 1.)

§ 160A-356. Financing parks and recreation. — Each county and city is authorized to expend for its parks and recreation system any of its revenues not otherwise limited as to use by law. Locally levied taxes may be used for parks and recreation purposes only to the extent approved by the qualified voters of the county or city. Bonds and notes may be issued for parks and recreation purposes only if approved by the qualified voters of the county or city. (1945, c. 1052; 1971, c. 698, s. 1.)

§ 160A-357. Referendum on establishment of system.—The governing board of any county or city may on its own initiative, and shall upon receipt of a petition from its qualified voters, submit to the voters the question of whether a system of supervised recreation shall be established in the county or city. The petition shall be signed by a number of qualified voters equal to at least ten percent (10%) of the number of voters registered to vote in the county or city according to the most recent figures certified by the State Board of Elections. The proposition may be submitted at a special election called for that purpose, or at any other special or general election or proposition referendum. Propositions for the levy or use of taxes for parks and recreation purposes and the issuance of bonds for these purposes may be placed on the same ballot, but shall be stated as separate and distinct propositions. If the voters approve a proposition to establish a parks and recreation system but disapprove tax or bond propositions, it shall be the duty of the governing board to establish the system only if sufficient nontax revenues are available to it for that purpose.

This section shall not be construed to require voter approval for the establishment of a parks and recreation system financed by nontax revenues. (1923, c. 83, s. 8; C. S., s. 2776(h); 1945, c. 1052; 1951, c. 933, s. 1; 1967, c. 703, ss. 3, 4; 1971, c. 698, s. 1.)

§§ 160A-358, 160A-359: Reserved for future codification purposes.

ARTICLE 19.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 160A-360. Territorial jurisdiction.—(a) All of the powers granted by this Article may be exercised by any city within its corporate limits. In addition, any city may exercise these powers within a defined area extending not more than one mile beyond its limits. With the approval of the board or boards of county commissioners with jurisdiction over the area, a city of 10,000 or more population but less than 25,000 may exercise these powers over an area extending not more than two miles beyond its limits and a city of 25,000 or more population may exercise these powers over an area extending not more than three miles beyond its limits. The boundaries of the city's extraterritorial jurisdiction shall be the same for all powers conferred in this Article. No city may exercise extraterritorially any power conferred by this Article that it is not exercising within its corporate limits.

(b) Any council wishing to exercise extraterritorial jurisdiction under this

Article shall adopt, and may amend from time to time, an ordinance specifying the areas to be included based upon existing or projected urban development and areas of critical concern to the city, as evidenced by officially adopted plans for its development. Boundaries shall be defined, to the extent feasible, in terms of geographical features identifiable on the ground. A council may, in its discretion, exclude from its extraterritorial jurisdiction areas lying in another county, areas separated from the city by barriers to urban growth, or areas whose projected development will have minimal impact on the city. The boundaries specified in the ordinance shall at all times be drawn on a map, set forth in a written description, or shown by a combination of these techniques. This delineation shall be maintained in the manner provided in G.S. 160A-22 for the delineation of the corporate limits, and shall be recorded in the office of the register of deeds of each county in which any portion of the area lies.

(c) Where the extraterritorial jurisdiction of two or more cities overlaps, the jurisdictional boundary between them shall be a line connecting the midway points of the overlapping area unless the city councils agree to another boundary line within the overlapping area based upon existing or projected patterns of development.

(d) If a city fails to adopt an ordinance specifying the boundaries of its extraterritorial jurisdiction, the county of which it is a part shall be authorized to exercise the powers granted by this Article in any area beyond the city's corporate limits. The county may also, on request of the city council, exercise any or all these powers in any or all areas lying within the city's corporate limits or within the city's specified area of extraterritorial jurisdiction.

(e) No city may hereafter extend its extraterritorial powers under this Article into any area for which the county at that time has adopted and is enforcing a zoning ordinance and subdivision regulations and within which it is enforcing the State Building Code. However, the city may do so where the county is not exercising all three of these powers, or when the city and the county have agreed upon the area within which each will exercise the powers conferred by this Article.

(f) When a city annexes an area that is currently being regulated by the county, the county regulations and powers of enforcement shall remain in effect until (i) the city has adopted such regulations or (ii) a period of 60 days has elapsed following the annexation, whichever is sooner. During this period the city may hold hearings and take any other measures that may be required in order to adopt its regulations for the area.

(g) When a local government is granted powers by this section subject to the request, approval, or agreement of another local government, the request, approval, or agreement shall be evidenced by a formally adopted resolution of that government's legislative body. Any such request, approval, or agreement can be rescinded upon two years' written notice to the other legislative bodies concerned by repealing the resolution. The resolution may be modified at any time by mutual agreement of the legislative bodies concerned.

(h) Nothing in this section shall repeal, modify, or amend any local act which defines the boundaries of a city's extraterritorial jurisdiction by metes and bounds or courses and distances.

(i) Reserved for future codification purposes.

(j) Notwithstanding the foregoing provisions of this section, and subject to the provisions of subsection (I) of this section, all city ordinances adopted before January 1, 1972, under authority of laws revised and reenacted in this Article, or any charter or local act concerning the same subject matter, shall continue in full force and effect within the territorial jurisdiction of the city as it existed on December 31, 1971, until the city defines the boundaries of its extraterritorial jurisdiction pursuant to this section, or July 1, 1972, whichever event first occurs. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1, 1¾; c. 1217; 1963, cc. 519, 889, 1076, 1105; 1965, c. 121; c. 348, s. 2; c. 450, s. 1; c. 864, ss. 3-6; 1967, cc. 15, 22, 149;

c. 197, s. 2; cc. 246, 685; c. 1208, s. 3; 1969, cc. 11, 53; c. 1010, s. 5; c. 1099; 1971, c. 698, s. 1; c. 1076, s. 3.)

Local Modification.—Mecklenburg: 1971, c. 860.

Editor's Note. — The 1971 amendment added subsection (j).

§ **160A-361. Planning agency.**—Any city may by ordinance create or designate one or more agencies to perform the following duties:

(1) Make studies of the area within its jurisdiction and surrounding areas;
(2) Determine objectives to be sought in the development of the study area;
(3) Prepare and adopt plans for achieving these objectives;
(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the council concerning the use and amendment of means for carrying out plans;
(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
(7) Perform any other related duties that the council may direct.

An agency created or designated pursuant to this section may include one or more of the following, with such staff as the council may deem appropriate:

(1) A planning board or commission of any size (not less than three members) or composition deemed appropriate, organized in any manner deemed appropriate;
(2) A joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter. (1919, c. 23, s. 1; C. S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1.)

The planning board (zoning commission) has no legislative, judicial or quasi-judicial power. Its recommendations do not restrict or otherwise affect the legislative power of the "legislative body," i.e., the city council. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971) (decided under former §§ 160-22 and 160-177).

§ **160A-362. Extraterritorial representation.**—When a city elects to exercise extraterritorial zoning or subdivision-regulation powers under G.S. 160A-360, it shall in the ordinance creating or designating its planning agency or agencies provide a means of representation for residents of the extraterritorial area to be regulated. Representation may be provided by an advisory board composed of residents of the area. The advisory board shall be given an opportunity to consider and make recommendations concerning any regulations to be applied to the area, any proposed amendments to those regulations, the approval of any proposed land subdivisions within the area, and the grant of any special exceptions, variances, special use permits, or conditional use permits sought for property within the area. In lieu of an advisory board, representation may be provided by appointing residents of the area to the planning agency and the board of adjustment that makes recommendations or grants relief in these matters. The members of the advisory board or representatives on the planning agency and the board of adjustment shall be appointed by the board of county commissioners with jurisdiction over the area. If there is an insufficient number of qualified residents of the area to meet membership requirements, the board of county commissioners may appoint as many other residents of the county as necessary to make up the requisite number. When the extraterritorial area extends into two or more counties, each board of county commissioners concerned shall appoint representatives from its portion of the area, as specified in the ordinance. If a board of county commissioners fails to make these appointments within 90 days after receiving a resolution from the city council requesting that they be made, the city council may make them. If the ordinance so provides, the outside representatives may have equal rights, privileges, and duties with the other members of the agency to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise they shall function only with respect to matters within the extraterritorial area. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1, 1¾; c. 1217; 1963, cc. 519, 889, 1076, 1105; 1965, c. 121; c. 348, s. 2; c. 450, s. 1; c. 864, ss. 3-6; 1967, cc. 15, 22, 149; c. 197, s. 2; cc. 246, 685; c. 1208, s. 3; 1969, cc. 11, 53; c. 1010, s. 5; c. 1099; 1971, c. 698, s. 1.)

§ **160A-363. Supplemental powers.**—A city or its designated planning agency may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated planning agency with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.

Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support any planning agency that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense. (1919, c. 23, s. 1; C. S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1.)

§ **160A-364. Procedure for adopting or amending ordinances under Article.**—Before adopting or amending any ordinance authorized by this Article, the city council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 15 days nor more than 25 days before the date fixed for the hearing. No ordinance adopted under this Article shall become effective until a copy thereof shall have been recorded in the office of the register of deeds of each county in which any property directly affected thereby is located. (1923, c. 250, s. 4; C. S., s. 2776-(u); 1927, c. 90; 1955, c. 1334, s. 1; 1971, c. 698, s. 1.)

§ **160A-365. Enforcement of ordinances.**—Subject to the provisions of the ordinance, any ordinance adopted pursuant to authority conferred by this Article may be enforced by any remedy provided by G.S. 160A-175. (1971, c. 698, s. 1.)

§§ **160A-366 to 160A-370:** Reserved for future codification purposes.

Part 2. Subdivision Regulation.

§ **160A-371. Subdivision regulation.**—A city may by ordinance regulate the subdivision of land within its territorial jurisdiction. (1955, c. 1334, s. 1; 1971, c. 698, s. 1.)

§ **160A-372. Contents and requirements of ordinance.**—A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision, and rights-of-way or easements for street and utility purposes; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal policies and standards and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.

The ordinance may provide for the reservation of school sites, according to comprehensive land use plans approved by the council or the planning agency. When a subdivision is submitted for approval, in which, according to the land use plan, a school site should be reserved, the council or planning agency shall notify the appropriate board of education that the subdivision has been submitted for approval and that under the ordinance a school site may be reserved therein. In reviewing the subdivision and giving approval thereto, the council or planning agency shall consult the board of education in determining the exact size and location of any school site to be reserved therein. Before the subdivision is finally approved, the board of education shall determine whether or not it wishes to have a school site reserved in the subdivision. If the board of education does not wish to have a school site reserved in the subdivision, it shall so notify the council or planning agency, and in that event no school site shall be reserved therein. If the board of education does wish to have a school site reserved in the subdivision, the subdivision as finally approved shall reserve a school site of a size and location agreeable to the board of education and to the council or planning agency. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site. If the board of education has not purchased or begun proceedings to acquire the site within 18 months after the subdivision is finally approved, the subdivider may proceed to dispose of it in accordance with other provisions of the ordinance.

The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever any subdivision of land takes place. (1955, c. 1334, s. 1; 1961, c. 1168; 1971, c. 698, s. 1.)

§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.—Any subdivision ordinance adopted pursuant to this Article shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final approval of each individual subdivision plat is to be given by

(1) The city council,
(2) The city council on recommendation of a planning agency, or
(3) A designated planning agency.

From and after the time that a subdivision ordinance is filed with the register of deeds of the county, no subdivision plat of land within the city's jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the appropriate agency, as specified in the subdivision ordinance, and until this approval shall have been entered on the face of the plat in writing by the chairman or head of the agency. The register of deeds shall not file or record a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat if the recording would be in conflict with this section. The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown thereon is within the subdivision-regulation jurisdiction of any city. (1955, c. 1334, s. 1; 1971, c. 698, s. 1.)

Editor's Note. — For article, "Transferring North Carolina Real Estate, Part I: How the Present System Functions," see 49 N.C.L. Rev. 413 (1971).

§ **160A-374. Effect of plat approval on dedications.**—The approval of a plat shall not be deemed to constitute or effect the acceptance by the city or public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat. However, any city council may by resolution accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes, when the lands or facilities are located within its subdivision-regulation jurisdiction. Acceptance of dedication of lands or facilities located within the subdivision-regulation jurisdiction but outside the corporate limits of a city shall not place on the city any duty to open, operate, repair, or maintain any street, utility line, or other land or facility, and a city shall in no event be held to answer in any civil action or proceeding for failure to open, repair, or maintain any street located outside its corporate limits. (1955, c. 1334, s. 1; 1971, c. 698, s. 1.)

§ **160A-375. Penalties for transferring lots in unapproved subdivisions.**—If a city adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The city, through its attorney or other official designated by the council, may enjoin illegal subdivision, transfer, or sale of land by action for injunction. (1955, c. 1334, s. 1; 1971, c. 698, s. 1.)

§ **160A-376. Definition.**—For the purpose of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale, or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

(1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulations;

(2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for the widening or opening of streets; and

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations. (1955, c. 1334, s. 1; 1971, c. 698, s. 1.)

§§ **160A-377 to 160A-380**: Reserved for future codification purposes.

Part 3. Zoning.

§ **160A-381. Grant of power.**—For the purpose of promoting health, safety, morals, or the general welfare of the community, any city is hereby empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes. These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. (1923, c. 250, s. 1; C. S., s. 2776(r); 1967, c. 1208, s. 1; 1971, c. 698, s. 1.)

Editor's Note. — The cases cited in the annotations to the sections in this Part were decided under former §§ 160-172 to 160-181.2 and other similar provisions.

Similarity of Provisions.—The language of former § 160-172 granting cities and towns the power to regulate by zoning, and § 153-266.10 granting the same power to boards of commissioners of counties, were almost identical in phraseology, as were former § 160-178 providing for a board of adjustment under a city ordinance and § 153-266.17 providing for a board of adjustment under a county ordinance. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

Former §§ 160-172 and 160-173 conferred upon the legislative bodies of cities and incorporated towns essentially the same authority as that conferred upon boards of county commissioners by §§ 153-266.10 and 153-266.11, respectively. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

Zoning ordinances are in derogation of the right of private property, and where exemptions appear in favor of the property owner, they must be liberally construed in favor of such owner. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

The original zoning power of the State reposes in the General Assembly. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964); Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971); Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

The power to zone is the power of the State and rests initially in the General Assembly. Decker v. Coleman, 6 N.C. 102, 169 S.E.2d 487 (1969).

The power to zone is the power originally vested in the General Assembly to legislate with reference to the use which may be made of land and the structures which may be erected or located thereon. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

The power to zone is the power of the State and rests in the General Assembly originally. There, it is subject to the limitations imposed by the Constitution upon the legislative power forbidding arbitrary and unduly discriminatory interference with the rights of property owners. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Power Has Been Delegated to Cities and Towns.—The General Assembly has delegated to the legislative body of cities and incorporated towns the power to adopt zoning regulations and, from time to time, to amend or repeal such regulations. In re Markham, 259 N.C. 566, 131 S.E.2d 329 (1963).

The General Assembly has delegated its police powers to enact zoning regulations to municipal corporations. Armstrong v. McInnis, 264 N.C. 616, 142 S.E.2d 670 (1965).

The General Assembly may delegate power to a municipal corporation to enact zoning ordinances in the exercise of police power of the State. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

A municipal corporation has no inherent

power to zone its territory and restrict to specified purposes the use of private property in each such zone. Such power has, however, been delegated to the cities and incorporated towns of this State by the General Assembly. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968); Decker v. Coleman, 6 N.C. App. 102, 169 S.E.2d 487 (1969).

A municipality has no inherent power to zone its territory and possesses only such power to zone as is delegated to it by the enabling statutes. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Through the provisions of former Article 14 of Chapter 160, fourteen cities and towns of this State were delegated the authority to zone property within their boundaries and to restrict to specified purposes the uses of private property within each zone. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

Delegation of Power to Zone Is Exception to General Rule. — The authority of the General Assembly to delegate to municipal corporations power to legislate concerning local problems, such as zoning, is an exception (established by custom in most, if not all, of the states) to the general rule that legislative powers, vested in the General Assembly by N.C. Const., Art. II, § 1, may not be delegated by it. This exception to the doctrine of nondelegation is not limited to a delegation of such legislative authority to incorporated cities and towns, but extends, as to other types of local matters, to a like delegation to counties and other units established by the General Assembly for local government. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

Validity of Enabling Statutes.—Statutes which have been passed authorizing the governing bodies of municipal corporations to enact zoning ordinances prescribing that in certain areas only designated types of buildings may be erected and used have been generally upheld by the courts as an exercise of the police power of the State. Vance S. Harrington & Co. v. Renner, 236 N.C. 321, 72 S.E.2d 838 (1952); Raleigh v. Morand, 247 N.C. 363, 100 S.E.2d 870 (1957).

Delegation of Power Cannot Exceed Power of General Assembly.—The General Assembly cannot delegate to a municipal corporation more extensive power to regulate the use of private property than the General Assembly, itself, possesses. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Power Cannot Be Further Delegated. — The power to zone is conferred upon the governing body of the municipality and cannot be delegated to the board of adjustment. Hence, a board of adjustment has no power to permit a type of business or building prohibited by the ordinance, for to do so would be an amendment of the law and not a variance of its regulations. James v. Sutton, 229 N.C. 515, 50 S.E.2d 300 (1948); In re O'Neal, 243 N.C. 714, 92 S.E.2d 189 (1956).

The legislative body of the municipal corporation may not delegate to the municipal board of adjustment the power to zone. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

The legislative body of the municipal corporation may not delegate to the municipal board of adjustment the power to zone; that is, the power originally vested in the General Assembly to legislate with reference to the use which may be made of land and the structures which may be erected or located thereon. It follows that a county zoning ordinance may not delegate such legislative powers to the county board of adjustment. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

It would constitute an unlawful delegation of the legislative power vested by the General Assembly in the board of aldermen of Winston-Salem pursuant to this section to allow the board of adjustment to deny a special permit on the ground that the board of adjustment did not consider a use specified in the ordinance as a conditional permissible use to be in accord with the "purpose and intent" of the ordinance. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

Nor Exercised by Board of Adjustment.—There is no substantial difference between the denial of a permit on the ground the conditional use is adverse to the public interest and the denial thereof on the ground the conditional use is not in accord with the "purpose and intent" of the ordinance; so, the denial of an application on this ground constituted an unlawful exercise of legislative power by the board of adjustment in violation of N.C. Const., Art. II, § 1. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

Power Need Not Be Exercised. — The grant of the power to zone to a municipal corporation imposes no duty upon the city or town to exercise it, and the courts may not require the city or town to enact zoning legislation. This is a matter within the discretion of the legislative body of the city or town. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Power Not Exhausted by Adoption of Zoning Ordinance. — The adoption of a zoning ordinance in exercise of the police power, thus delegated to a municipal corporation, does not exhaust that power. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Municipality exercises the police power of the State within the limits of the zoning power delegated. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964); Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

In enacting and enforcing zoning regulations, a municipality acts as a governmental agency and exercises the police power of the State. Armstrong v. McInnis, 264 N.C. 616, 142 S.E.2d 670 (1965).

Zoning laws, when valid, are an exercise of the police power of the sovereign reasonably to regulate or restrict the use of private property to promote the public health, the public safety, the public morals or the public welfare. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

In enacting and enforcing zoning regulations, a municipality acts as a governmental agency and exercises the police power of the State. Taylor v. Bowen, 272 N.C. 726, 158 S.E.2d 837 (1968).

But Power Is Subject to Limitations of Enabling Act. — The power to zone, conferred upon the "legislative body" of a municipality, is subject to the limitations of the enabling act. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964); Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

The authority of a city or town to enact zoning ordinances is subject both to the limitations imposed by the Constitution and to the limitations of the enabling statute. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

The power to zone, conferred upon the legislative body of a municipality, is subject to the limitations of the enabling act. Within the limits of the powers so delegated the municipality exercises the police power of the State. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

The authority to zone property and to restrict to specified purposes the uses of private property within each zone is limited by the provisions of the enabling statute and also by constitutional provisions which forbid arbitrary and unduly discriminatory interference with the rights of property owners. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

Exercise by a city of delegated power to zone is subject both to limitations imposed by the Constitution upon the legislative power of the State itself, forbidding arbitrary and unduly discriminatory interference with the rights of property owners, and is also subject to the limitations in the statutes by which the power was delegated. Decker v. Coleman, 6 N.C. App. 102, 169 S.E.2d 487 (1969).

The authority to enact zoning ordinances is subject to the limitations imposed by the enabling statute and by the Constitution. These limitations forbid arbitrary and unduly discriminatory interference with property rights in the exercise of such power. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Disregarding Enabling Act May Be Arbitrary. — Notwithstanding that the motivation of the members of a city legislative body may be laudable, any action of that body that disregards the fundamental concepts of zoning as set forth in the enabling legislation may be arbitrary and capricious. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Zoning Ordinance Is Not Contract.—In enacting a zoning ordinance a municipality is engaged in legislating and not in contracting. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Validity of Ordinances. — An ordinance passed under an enabling statute following its provisions and carrying it into effect in the city passing it, prescribing uniform regulations for each zone or district and giving an inspector certain judicial functions with respect to the kind or class of buildings under a board of adjustment and review, and providing for certiorari is a valid exercise of power and not repugnant to the organic law prohibiting discriminations. Harden v. Raleigh, 192 N.C. 395, 135 S.E. 151 (1926).

A zoning ordinance limiting the uses of property solely on the basis of race is beyond the scope of police power, since the reserved police power of the State must stop when it encroaches on the protection afforded the citizen by the federal Constitution. Clinard v. Winston-Salem, 217 N.C. 119, 6 S.E.2d 867, 126 A.L.R. 634 (1940).

A zoning ordinance covering all land within the municipality and separating commercial and industrial districts of the city from those set apart for residences, schools, parks, libraries, churches, etc., and which is uniform and operates alike on all territory within the respective zones, bears a reasonable relation to the health, safety, morals and general welfare of the entire community and is a valid and constitutional exercise of the delegated police power of the municipality. Kinney v. Sutton, 230 N.C. 404, 53 S.E.2d 306 (1949).

The fact that a lot would be more valuable if devoted to a nonconforming use does not deprive the owner of property without due process of law when the zoning regulations are uniform in their application to all within the respective districts, and the differentiation of the uses of property within the respective districts is in accordance with a comprehensive plan in the interest of the health, safety, morals or general welfare of the entire community. Kinney v. Sutton, 230 N.C. 404, 53 S.E.2d 306 (1949).

Provisions of a zoning ordinance which permits commercial and industrial activities within a residential district provided such activities are carried on by members of the immediate family and not more than two persons are employed therein, does not render the ordinance void as being discriminatory, since the commercial activities permitted thereunder in a residential district are so intrinsically different from unlimited commercial and industrial activities in general as to permit their separate classification. Kinney v. Sutton, 230 N.C. 404, 53 S.E.2d 306 (1949).

An ordinance which purports to prohibit the erection of a gin or mill in the town without the consent of neighboring property owners cannot be upheld. Wilcher v. Sharpe, 236 N.C. 308, 72 S.E.2d 662 (1952), commented on in 31 N.C.L. Rev. 308.

As a general rule a zoning ordinance of a municipality is valid and enforceable if it emanates from ample grant of power by the legislature to the city or town, if it has a reasonable tendency to promote the public safety, health, morals, comfort, welfare and prosperity and if its provisions are not arbitrary, unreasonable or confiscatory. Helms v. Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961).

It is not a prerequisite to the validity of a zoning ordinance that the zoning district lines should coincide with property lines. Helms v. Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961).

The mere fact that a zoning ordinance seriously depreciates the value of complainant's property is not enough, standing alone, to establish its invalidity. Helms v. Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961); County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

A municipal zoning ordinance is confiscatory and invalid in its application to a particular lot if it is practically impossible to use such lot for the purpose permitted by the ordinance so that the ordinance renders such property valueless for practical purposes. Helms v. Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961).

Zoning ordinances are upheld when, but only when, they bear a substantial relation to the public health, safety, morals, or general welfare. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

The court will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining whether its action is in the interest of the public health, safety, morals, or general welfare. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

When the most that can be said against an ordinance adopted in the proper exercise of the police power is that whether it was an unreasonable, arbitrary or unequal exercise of power is fairly debatable, the courts will not interfere. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

If the police power is properly exercised in the zoning of a municipality, a resultant pecuniary loss to a property owner is a misfortune which he must suffer as a member of society. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

A zoning ordinance or an amendment thereto which is not adopted in accordance with the enabling statutes is invalid and ineffective. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

A particular zoning enactment or provision thereof may be judicially declared to be inoperative and void for uncertainty, vagueness, or indefiniteness. However, the courts will not, in doubtful cases, declare a statute to be so meaningless and unintelligible as to be inoperative. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

With reference to zoning the law is disposed to interpret language in the light of surrounding circumstances and to give to words their ordinary meaning and significance. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

City Council May Adopt Comprehensive Zoning Ordinance.—Former §§ 160-172 and 160-173 conferred upon a city council legislative power to adopt a comprehensive zoning ordinance. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

The validity of comprehensive zoning

ordinances has been recognized by the Supreme Court of the United States and by the Supreme Court of North Carolina. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Former § 160-172 and the charter of the City of Raleigh confer upon the city council of Raleigh legislative power to enact a comprehensive zoning ordinance. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

And May Determine Signs Permitted in Each District. — Subject to constitutional limitations, a city council has authority to determine and define legislatively what signs will be permitted in each of the respective zones or districts. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

Two of the essentials of a comprehensive zoning ordinance are: (1) it applies to all territory subject to the zoning jurisdiction of a city council, including the area beyond and surrounding the corporate limits of the city for a distance of one mile in all directions, and (2) with reference to property within a particular district or zone, all uses permissible in the zone are available as of right to the owner. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Same Restrictions Must Apply to Each Class.—When a classification of a zone has been made, all the areas in each class must be subject to the same restrictions. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Zoning Regulations May Be Amended and Changed.—In enacting a zoning ordinance, a municipality is engaged in legislating and not in contracting. As a consequence, a zoning ordinance fixing the boundaries of zones does not result in a contract between the municipality and property owners precluding the municipality from afterwards changing the boundaries if it deems a change to be desirable. Moreover, a zoning ordinance does not vest in a property owner the right that the restrictions imposed by it upon his property or the property of others shall remain unaltered. For these reasons, zoning regulations may be amended or changed when such action is authorized by the enabling statute and does not contravene constitutional limitations on the zoning power. Marren v. Gamble, 237 N.C. 680, 75 S.E.2d 880 (1953).

City May Limit Use of Property in Residential District. — Former § 160-172 authorized municipalities to enact zoning ordinances prohibiting the use of property within a residential district for business or commercial purposes. Kinney v. Sutton, 230 N.C. 404, 53 S.E.2d 306 (1949).

Variance and Nonconforming Buildings.—The privilege of erecting a nonconforming building or a building for a nonconforming use may not be granted under the guise of a variance permit, and action to that effect is in direct conflict with the general purpose and intent of the ordinance and does violence to its spirit. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

Special Exception.—A special exception within the meaning of a zoning ordinance is one which is expressly permitted in a given zone upon proof that certain facts and conditions detailed in the ordinance exist. It is granted by the board of adjustment, after a public hearing, upon a finding that the specified conditions have been satisfied. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

Storage of Gasoline.—A municipal ordinance prohibiting storage of gasoline within the fire district of the city in tanks with a capacity greater than 4,400 gallons bears sufficient relationship to the public safety to come within the police power of the municipality, at least for purpose of sustaining a finding to that effect upon the hearing of an order to show cause why a temporary order restraining the violation of the ordinance should not be continued to the hearing. Fayetteville v. Spur Distributing Co., 216 N.C. 596, 5 S.E. 838 (1939).

Building Inspector Must Follow Literal Provisions of Regulations.—In the issuing of building permits the building inspector, a purely administrative agent, must follow the literal provisions of the zoning regulations. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

A duly adopted rezoning ordinance is presumed to be valid. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

There is a presumption that the city council adopts a zoning ordinance in the proper exercise of the police power. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

Burden of Establishing Invalidity of Ordinance. — A property owner who asserts the invalidity of a zoning ordinance adopted in the proper exercise of the police power has the burden of establishing its invalidity. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

A municipal zoning ordinance will be presumed to be valid, and the burden is on the complaining party to show it to be invalid. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

How a city or town shall be zoned or rezoned and how various properties shall be classified or reclassified rests with the municipal legislative body, and its judgment is presumed to be reasonable and valid and beyond judicial interference unless shown to be arbitrary, unreasonable or capricious. The burden of establishing such arbitrariness is on the one asserting it. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

Validity of Ordinance Presents Questions of Fact.—Controversies in respect of facts pertinent to the validity of a rezoning ordinance present questions of fact for determination by the superior court judge. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

This section contains no provision for judicial review by certiorari or otherwise of the action of the legislative body of cities and towns with reference to the enactment, amendment or repeal of zoning regulations. In re Markham, 259 N.C. 566, 131 S.E.2d 329 (1963). As to review of decisions of board of adjustment, see § 160A-388(e).

§ **160A-382. Districts.**—For any or all these purposes, the city may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this Article; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. All regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. (1923, c. 250, s. 2; C. S., s. 2776(s); 1931, c. 176, s. 1; 1933, c. 7; 1963, c. 1058, s. 1; 1971, c. 698, s. 1.)

Cross Reference. — See the note to § 160A-381.

Two of the essentials of a comprehensive zoning ordinance are: (1) it applies to all territory subject to the zoning jurisdiction of a city council, including the area beyond and surrounding the corporate limits of the city for a distance of one mile in all directions; and (2) with reference to property within a particular district or zone, all uses permissible in the zone are available as of right to the owner. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Nature of Uniformity of Law. — In one part of a district a filling station may be noxious or offensive to the public within the purview of the ordinance and in another part it may not be; at one place it may menace the public safety and at another it may not. Conditions and probable results must be taken into account. This is the principle on which the board of adjustment has acted; it passes on individual cases, of course, but each case is determined in the contemplation of the statute and the ordinance by a uniform rule. Harden v. Raleigh, 192 N.C. 395, 135 S.E. 151 (1926).

Restrictions on Use Must Be Uniform in All Areas of Same Class. — When a city adopts a zoning ordinance restrictions on use must be uniform in all areas in a defined class or district. Different areas in a municipality may be put in the same class. The law does not require all areas of a defined class to be contiguous, but when the classification has been made, all areas in each class must be subject to the same restrictions. Decker v. Coleman, 6 N.C. App. 102, 169 S.E.2d 487 (1969).

When a classification of a zone has been made, all the areas in each class must be subject to the same restrictions. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Zoning District Lines Need Not Coincide with Property Lines. — It is not required that zoning district lines coincide with property lines, regardless of the area involved. Penny v. Durham, 249 N.C. 596, 107 S.E.2d 72 (1959).

To hold that zoning district lines must coincide with property lines, regardless of area involved, would be to render the act largely ineffective. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Application Where Ordinance Invalid.—Under the provisions of this statute, the regulations prescribed shall be uniform for each class or kind of building throughout each district, and the regulations of one district may differ from those of the others, and can have no application to the question of the rights of the governmental body of the city refusing to issue a permit for a gasoline filling station, in denial of the right of an applicant for such license under an invalid ordinance. Bizzell v. Board, 192 N.C. 364, 135 S.E. 58 (1926).

§ 160A-383. Purposes in view.—Zoning regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city. (1923, c. 250, s. 3; C. S., s. 2776(t); 1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-381.

Section Sets Out Purposes of Comprehensive Zoning Ordinance.—The purposes for which a municipal corporation may adopt a comprehensive zoning ordinance are set forth in this section. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

A "comprehensive plan" is simply a plan which zones an entire town or city, as opposed to a limited portion thereof arbitrarily selected for zoning in a manner which is calculated to achieve the statutory purposes set forth in this section. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

While courts have differed with respect to the definition of a "comprehensive plan," the majority have held that no extrinsic written plan, such as a master plan based upon a comprehensive study, is required. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

A comprehensive zoning plan is a means by which the character of the community is to be preserved although devoting the land to its most appropriate uses. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

The ordinance itself may show that the zoning is comprehensive in nature. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

The matter of zoning is prospective because it in effect constitutes planning as to how a city or town will be developed in the future. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

City Legislative Body May Not Disregard Fundamental Concepts of Zoning.—Notwithstanding that the motivation of the members of a city legislative body may be laudable, any action of that body that disregards the fundamental concepts of zoning as set forth in the enabling legislation may be arbitrary and capricious. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Authority to Rezone.—Unquestionably, a city's legislative body has authority to rezone property when reasonably necessary to do so in the interests of the public health, the public safety, the public morals or the public welfare. Ordinarily, the only limitation upon this legislative authority is that it may not be exercised arbitrarily or capriciously. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Rezoning on Condition. — The rezoning of residential property to a business use on the condition that the land rezoned shall be devoted exclusively to the business use for which application to rezone was made, or otherwise remain residential, constitutes zoning without regard to the public health, safety and welfare, concern for which is basic to that comprehensiveness contemplated in the enabling act. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Spot zoning arises where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, is placed arbitrarily in a different use zone from that to which the surrounding property is made subject. When such small area is subjected to a more burdensome restriction than that applicable to the surrounding property of like kind, the weight of authority is that the owner of the property so subjected to discriminatory regulation may successfully attack the validity of the ordinance. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968); Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

The rule denying the validity of spot zoning ordinances has been applied where a small area previously in a residential zone has been removed, by an amending ordinance, from such zone and reclassified to permit business or commercial use over the objection of adjoining owners of residential property. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968); Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

While the size of an area is seldom solely determinative of the question of whether an ordinance constitutes spot zoning, it is a factor that few courts are prone to overlook. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

In designing zoning regulations to prevent and relieve traffic congestion it is important that streets and thoroughfares planned for an area be considered as well as those in existence. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

§ 160A-384. Method of procedure.—The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. (1923, c. 250, s. 4; C. S., s. 2776(u); 1927, c. 90; 1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-381.

Ordinance Is Presumed Valid.—When it is shown that a zoning ordinance has been adopted by the governing board of a municipality, there is a presumption in favor of the validity of the ordinance and the burden is upon the complaining property owner to show its invalidity or inapplicability. Helms v. Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961).

There is a presumption that a zoning ordinance, adopted pursuant to the prescribed procedures, is valid and the mere fact that it depreciates the value of the complainant's property is not enough to establish its invalidity. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Court Will Not Substitute Its Judgment for Legislative Body's. — When the most that can be said against a zoning ordinance is that whether it was unreasonable, arbitrary or unequal exercise of power is fairly debatable, the courts will not interfere. In such circumstances the settled rule seems to be the court will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining whether its action is in the interest of the public health, safety, morals or general welfare. Helms v. Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961).

When the most that can be said against a zoning ordinance is that whether it was an unreasonable, arbitrary or unequal exercise of power is fairly debatable, the courts will not interfere. Under such circumstances the courts may not substitute their judgment for that of the legislative body of the municipality as to the wisdom of the legislation. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

But City Legislative Body May Not Disregard Fundamental Concepts of Zoning.—Notwithstanding that the motivation of the members of a city legislative body may be laudable, any action of that body that disregards the fundamental concepts of zoning as set forth in the enabling legislation may be arbitrary and capricious. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Permit for Nonconforming Use Does Not Prevent Enforcement.—The fact that a municipal official issues a permit for a nonconforming use after the enactment of a zoning ordinance does not estop the municipality from enforcing the ordinance. Helms v. Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961).

Rezoning.—Unquestionably, a city's legislative body has authority to rezone property when reasonably necessary to do so in the interests of the public health, the public safety, the public morals or the public welfare. Ordinarily, the only limitation upon this legislative authority is that it may not be exercised arbitrarily or capriciously. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Notice and an opportunity to be heard are prerequisite to the validity of a modification of municipal zoning regulations, but notice published in a newspaper of general circulation in the municipality and county advising that changes in the zoning of described property and proposed change in the zoning ordinance of the municipality would be discussed, and inviting all persons interested in the proposed changes to be present is sufficient to sustain a finding that notice of both change in the zoning regulations and in zone lines had been given. Walker v. Elkin, 254 N.C. 85, 118 S.E.2d 1 (1961).

The fact that the complainants did not

see a notice given by advertisement in a local newspaper cannot affect the validity of the ordinance when everything required by the statute was done before its adoption. It is a matter of almost daily occurrence that rights are affected and the status of relationships is changed upon the giving of similar notice, but no one may successfully contend that acts predicated upon such notice are rendered invalid because persons affected did not see the notice in the newspaper. Helms v. Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961).

§ 160A-385. Changes. — Zoning regulations and restrictions and zone boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in a proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of the opposite lots, an amendment shall not become effective except by favorable vote of three fourths of all the members of the city council. (1923, c. 250, s. 5; C. S., s. 2776(v); 1959, c. 434, s. 1; 1965, c. 864, s. 1; 1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-381.

This section prevails over a municipal ordinance providing that a change in zoning regulations could be approved by a majority of the city commissioners. Eldridge v. Mangum, 216 N.C. 532, 5 S.E.2d 721 (1939).

The enactment of a zoning ordinance is not a contract with property owners of the city and confers upon them no vested right to have the ordinance remain forever in force or to demand that the boundaries of each zone or the uses to be made of property in each zone remain as declared in the original ordinance. Such legislation by the city may be repealed in its entirety, or amended as the city's legislative body determines from time to time to be in the best interests of the public, subject only to the limitations of the enabling statute and the limitations of the Constitution. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

A city's legislative body has authority to rezone property when reasonably necessary to do so in the interests of the public health, the public safety, the public morals or the public welfare. Ordinarily, the only limitation upon this legislative authority is that it may not be exercised arbitrarily or capriciously. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Amendment Need Not Accomplish All Purposes Specified in Enabling Act.—It is not required that an amendment to a zoning ordinance accomplish or contribute specifically to the accomplishment of all of the purposes specified in the enabling act. It is sufficient that the legislative body of the city had reasonable ground upon which to conclude that one or more of those purposes would be accomplished or aided by the amending ordinance. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

But Tract Must Be Suitable for All Uses Permitted under New Classification.—The zoning of a tract of land may be changed from the residential classification to a less restrictive residential classification only if and when its location and the surrounding circumstances are such that the property should be made available for all uses permitted in the less restrictive district. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

City Legislative Body May Not Disregard Fundamental Concepts of Zoning.—Notwithstanding that the motivation of the members of a city legislative body may be laudable, any action of that body that disregards the fundamental concepts of zoning as set forth in the enabling legislation may be arbitrary and capricious. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Determining Validity of Amending Ordinance.—The basic rule to determine the validity of an amending ordinance is the same rule used to determine the validity of the original ordinance. The legislative body must act in good faith. It cannot act arbitrarily or capriciously. If the conditions existing at the time of the proposed change are such as would have originally justified the proposed action, the legislative body has the power to act. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

Inquiry Is Whether Amendment Is beyond Legislative Power of City. — The relevant inquiry is always whether the amending ordinance is beyond the legislative power of the city. If it is not, the area rezoned becomes a legitimate part of the original comprehensive zoning plan of the city. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

If It Is, Proposed Use Remains Unlawful.—If the amending ordinance is beyond the legislative power of the city, whether for the reason that it constitutes spot zoning or on some other ground, its adoption does not remove the designated area from the effect of the comprehensive zoning ordinance previously enacted. In that event, the proposed use remains unlawful, and the right of owners of adjoining property to enjoin such use is not affected by the amending ordinance. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

A duly adopted rezoning ordinance is presumed to be valid. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Controversies in respect of facts pertinent to the validity of a rezoning ordinance present questions of fact for determination by the superior court judge. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Rezoning on consideration of assurances that a particular tract or parcel will be developed in accordance with restricted approved plans is not a permissible ground for placing the property in a zone where restrictions of the nature prescribed are not otherwise required or contemplated. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Rezoning must be effected by the exercise of legislative power rather than by special arrangements with the owner of a particular tract or parcel of land. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

The rezoning of residential property to a business use on condition that the land rezoned shall be devoted exclusively to the business use for which application to rezone was made, or otherwise remain residential, constitutes zoning without regard to the public health, safety and welfare, concern for which is basic to that comprehensiveness contemplated in the enabling act. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Persons Entitled to Invoke Protest Provisions.—In order for plaintiffs to invoke the provisions of this section they must own 20 percent or more of the area extending 100 feet from the rezoned tract. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

The protest provision of this section extends to the owners of 20 percent or more of each of the areas of the lots on either side of, and extending 100 feet from, any area included in proposed changes or amendments of municipal zoning ordinances. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

The owners of lots immediately outside of, (within 100 feet) or adjoining the boundary line of the property to be altered are the parties most directly affected by the alteration and therefore, most logically are the owners "of the area of the lots" intended by the legislature to qualify as protestants. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Creation of Buffer Zone to Avoid Necessity of Larger Than Majority Vote. — Where an applicant for a zoning change seeks to avoid the necessity of a larger than majority vote by creating a buffer zone of 100 feet between that portion of his property sought to be rezoned and the lands of adjacent property owners, such action is valid and avoids the requirement of such larger vote. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

"Immediately Adjacent". — The words "immediately adjacent" mean "adjoining" or "abutting." This interpretation creates an area easily determinable which lends itself to definite calculations of the percentage required to invoke the provisions of the statute. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

"Lot". — The context of this section indicates that the word "lot" has its common and ordinary meaning. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

"Directly opposite" means those tracts of land on opposite sides of the street with only the street intervening. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Where a zoning ordinance, passed by a majority vote of the city council, rezoned applicant's property lying more then 150 feet from the street, but left the zoning regulations unchanged as to applicant's property abutting the street to a depth of 150 feet therefrom, and owners of more than 20 percent of the footage on the opposite side of the street from applicant's property had protested the change, the property of those protesting did not lie "directly opposite" the property rezoned within the purview of this section, and therefore it was not required that the zoning ordinance be passed by three fourths of the members of the city council. Penny v. Durham, 249 N.C. 596, 107 S.E.2d 72 (1959).

Notice and Public Hearing Required. — The general rule as applied to former Article 14 of Chapter 160 was that there had to be compliance with the statutory requirements of notice and public hearing in order to adopt or amend zoning ordinances. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

No further notice or hearing is required after a properly advertised and properly conducted public hearing when the alteration of the initial proposal is insubstantial. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Unless Alterations from Original Proposal Are Substantial. — If the ordinance or amendment as finally adopted contains alterations substantially different (amounting to a new proposal) from those originally advertised and heard, there must be additional notice and opportunity for additional hearing. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

And Initial Notice Was Not Broad Enough to Indicate Them.—Additional notice and public hearing ordinarily will not be required when the initial notice is broad enough to indicate the possibility of substantial change and substantial changes are made of the same fundamental character as contained in the notice, such changes resulting from objections, debate, and discussion at the properly noticed initial hearing. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Alterations Favorable to Complainants Are Not Substantial. — Alteration of the initial proposal will not be deemed substantial when it results in changes favorable to the complaining parties. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

§ 160A-386. Protest petition; form; requirements; time for filing.—No protest against any change in or amendment to a zoning ordinance or zoning map shall be valid or effective for the purposes of G.S. 160A-385 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the city clerk in sufficient time to allow the city at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The city council may by ordinance require that all protest petitions be on a form prescribed and furnished by the city, and such form may prescribe any reasonable information deemed necessary to permit the city to determine the sufficiency and accuracy of the petition. (1963, c. 1058, s. 2; 1971, c. 698, s. 1.)

§ 160A-387. Planning agency; zoning plan; certification to city council.—In order to exercise the powers conferred by this Article, a city council shall create or designate a planning agency under the provisions of this Article or of a special act of the General Assembly. The planning agency shall prepare a zoning plan, including both the full text of a zoning ordinance and maps showing proposed district boundaries. The planning agency may hold public hearings in the course of preparing the plan. Upon completion, the planning agency shall certify the plan to the city council. The city council shall not hold its required public hearing or take action until it has received a certified plan from the planning agency. Following its required public hearing, the city council may refer the plan back to the planning agency for any further recommendations that the agency may wish to make prior to final action by the city council in adopting, modifying and adopting, or rejecting the ordinance. (1923, c. 250, s. 6; C. S., s. 2776(w); 1967, c. 1208, s. 2; 1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-381.

A municipal planning and zoning commission has no legislative, judicial or quasi-judicial power, and the city council acts in the exercise of its legislative function in determining whether the commission's recommendations in regard to the enactment of zoning ordinances should be followed. In re Markham, 259 N.C. 566, 131 S.E.2d 329 (1963).

The planning board (zoning commission) has no legislative, judicial or quasi-judicial power. Its recommendations do not restrict or otherwise affect the legislative power of the city council. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

§ 160A-388. Board of adjustment.—(a) The city council may provide for the appointment and compensation of a board of adjustment consisting of five members, each to be appointed for three years. In appointing the original members of such board, or in the filling of vacancies caused by the expiration of the terms of existing members, the council may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The council may, in its discretion, appoint and provide compensation for alternate members to serve on the board in the absence of any regular member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

(b) The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this Part. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of the ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(e) The concurring vote of four fifths of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this Article, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance. Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari.

(f) The chairman of the board of adjustment or any member temporarily acting as chairman, is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board. (1923, c. 250, s. 7; C. S., s. 2776(x); 1929, c. 94, s. 1; 1947, c. 311; 1949, c. 979, ss. 1, 2; 1963, c. 1058, s. 3; 1965, c. 864, s. 2; 1967, c. 197, s. 1; 1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-381.

Editor's Note.—For article on power of zoning board of adjustment to grant variances from zoning ordinance, see 29 N.C.L. Rev. 245.

Purpose of Section.—The plain intent and purpose of former § 160-178 was to permit, through the board of adjustment, the amelioration of the rigors of necessarily general zoning regulations by eliminating the necessity for a slavish adherence to the precise letter of the regulations where, in a given case, little or no good on the one side and undue hardship on the other would result from a literal enforcement. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

Similarity of Provisions.—The language of former § 160-172 granting cities and towns the power to regulate by zoning, and § 153-266.10 granting the same power to boards of commissioners of counties, were almost identical in phraseology, as were former § 160-178, providing for a board of adjustment under a city ordinance and § 153-266.17, providing for a board of adjustment under a county ordinance. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

"Unnecessary hardship" does not mean a pecuniary loss to a single owner in being denied a building permit for a nonconforming structure pursuant to zoning regulations binding upon all alike. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

Section Grants No Legislative Power.—Former §§ 160-172 and 160-178 did not grant to board of adjustment legislative authority, and therefore, board was without power to amend an ordinance under which it functions. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

The board is not a law-making body and has no power to amend the zoning ordinance either to permit the construction of a building prohibited by ordinance or to prohibit the construction of one permitted by ordinance. In re Rea Constr. Co., 272 N.C. 715, 148 S.E.2d 887 (1968).

Nature of Power.—The board of adjustment is clothed, if not with judicial, at least with quasi-judicial power; it being its duty to investigate facts and from its investigation to draw conclusions as a basis of official action and to exercise discretion of a judicial nature. These are not mere ministerial duties. Harden v. Raleigh, 192 N.C. 395, 135 S.E. 151 (1926); Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

A board of adjustment is also an administrative agency which acts in a quasi-judicial capacity. In re Rea Constr. Co., 272 N.C. 715, 158 S.E.2d 887 (1968); Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

Within the class of quasi-judicial acts fall the board's conclusions as to whether the proposed building would be noxious or offensive or detrimental to the public safety or welfare by reason of its situation or the surrounding conditions; also in this class is the legal discretion to be exercised by the board upon the conclusions reached. Harden v. Raleigh, 192 N.C. 395, 135 S.E. 151 (1926); Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

The legislature may delegate to the board of adjustment, as a quasi-judicial body, the authority to determine facts and therefrom to draw conclusions as a basis of its official action. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

The planning and zoning commission is separate and distinct from the board of adjustment. The board of adjustment is clothed, if not with judicial, at least with quasi-judicial power, it being its duty to investigate facts and from its investigation to draw conclusions as a basis of official action and to exercise discretion of a judicial nature. Even so, it is not a law-making body and may not disregard zoning regulations adopted by the legislative body, to wit, the city council. It can merely vary them to prevent injustice when the strict letter of the provisions would work unnecessary hardship. In re Markham, 259 N.C. 566, 131 S.E.2d 329 (1963).

Ordinances in Conflict with Section Are Void.—Municipal ordinances prescribing procedure for the enforcement of zoning regulations in conflict with those prescribed by former § 160-178 were void, since that section contemplated that enforcement procedure shall be uniform. Mitchell v. Barfield, 232 N.C. 325, 59 S.E.2d 810 (1950).

Unlawful Delegation of Legislative Power.—It would constitute an unlawful delegation of the legislative power vested by the General Assembly in a board of aldermen to allow the board of adjustment to deny a special permit on the ground that the board of adjustment did not consider a use specified in the ordinance as a conditional permissible use to be in accord with the "purpose and intent" of the ordinance. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

The legislative body of the municipal corporation may not delegate to the municipal board of adjustment the power to zone. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

Unlawful Exercise of Legislative Power.—There is no substantial difference between the denial of a permit on the ground the conditional use is adverse to the public interest and the denial thereof on the ground the conditional use is not in accord with the "purpose and intent" of the ordinance; so, the denial of an application on this ground constituted an unlawful exercise of legislative power by the board of adjustment in violation of the Constitution. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

Board Cannot Permit Nonconforming Use or Structure.—Board of adjustment cannot permit type of business or building prohibited by zoning ordinance, for to do so would be an amendment of law and not a variance of its regulations. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

But Can Merely "Vary" Regulations.—The board of adjustment cannot disregard the provisions of the enabling act or regulations enacted in accordance with zoning law but can merely "vary" them to prevent injustice when the strict letter of the provisions would work "unnecessary hardship." Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

The principal function of a board of adjustment is to issue variance permits so as to prevent injustice by a strict application of the ordinance. In re Rea Constr. Co., 272 N.C. 715, 158 S.E.2d 887 (1968).

A "special exception" within the meaning of a zoning ordinance is one which is expressly permitted in a given zone upon proof that certain facts and conditions detailed in the ordinance exist. It is granted by the board of adjustment, after a publi hearing, upon a finding that the specifie conditions have been satisfied. Keiger v Winston-Salem Bd. of Adjustment, 27 N.C. 17, 178 S.E.2d 616 (1971).

Exercise of Discretion.—In exercisin its discretion, the board of adjustmen must abide by the rules provided by it charter—the local ordinance enacted i accord with and by permission of the Stat zoning law. Jackson v. Guilford Count Bd. of Adjustment, 2 N.C. App. 408, 16 S.E.2d 265 (1968).

A special permit is not a legal right bu is a concession in exceptional cases whic the board, in the exercise of its discretion may grant, subject to court review. Crave v. Zoning Bd. of Adjustment, 267 N.C. 40 147 S.E.2d 599 (1966).

Board's Findings May Not Be Base on Unsworn Statements.—Absent stipulations or waiver, a board of adjustment may not base critical findings of fact as to the existence or nonexistence of a nonconforming use on unsworn statements. Jarrell v. Board of Adjustment for High Point, 258 N.C. 476, 128 S.E.2d 879 (1963).

Where one asserts a legal right to a nonconforming use, whether he has such legal right depends upon factual findings, and in the determination of such factual findings unsworn statements may not be considered either competent or substantial. Jarrell v. Board of Adjustment for High Point, 258 N.C. 476, 128 S.E.2d 879 (1963).

Waiver of Right to Insist That Witnesses Be under Oath.—By voluntary participation in a hearing, a party may waive the right to insist that the witnesses should be under oath. Craver v. Zoning Bd. of Adjustment, 267 N.C. 40, 147 S.E.2d 599 (1966).

Where Action of Board Does Not Constitute Res Judicata upon Second Application.—The approval by the board of adjustment of a denial of a permit to erect a filling station on certain land does not constitute res judicata upon a second application made therefor three years after the first application upon substantial change of the traffic conditions. In re Application of Broughton Estate, 210 N.C. 62, 185 S.E. 434 (1936).

Who May Appeal from Order. — Any owner whose property is affected has the right to apply to the courts for review of an order of a municipal board of adjustment. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

Optionee. — Since an optionee has no present right to erect a building on the land, the withholding of a building permit from him cannot in law impose an "undue and unnecessary hardship" upon him as a predicate for relief from an order of a municipal board of adjustment. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

A legal proceeding must be prosecuted by a legal person, whether it be a natural person, sui juris, or a group of individuals or other entity having the capacity to sue and be sued, such as a corporation, partnership, unincorporated association, or governmental body or agency. In re Coleman, 11 N.C. App. 124, 180 S.E.2d 439 (1971).

And Not by Aggregation of Anonymous Individuals.—A legal proceeding prosecuted by an aggregation of anonymous individuals, known only to their counsel, is a phenomenon unknown to the law of this jurisdiction. In re Coleman, 11 N.C. App. 124, 180 S.E.2d 439 (1971).

Even a class action must be prosecuted or defended by one or more named members of the class. In re Coleman, 11 N.C. App. 124, 180 S.E.2d 439 (1971).

Adequacy of Scope of Review.—While there is express provision for a review "by proceedings in the nature of certiorari," this is an "adequate procedure for judicial review" (within the meaning of § 143-307) only if the scope of review is equal to that under § 143-306 et seq. Jarrell v. Board of Adjustment for High Point, 258 N.C. 476, 128 S.E.2d 879 (1963).

The scope of review must be equal to that provided by § 143-306 et seq. In re Coleman, 11 N.C. App. 124, 180 S.E.2d 439 (1971).

Extent of Review.—Quasi-judicial functions, when exercised, not arbitrarily, but in subordination to a uniform rule prescribed by statute, ordinarily are not subject to judicial control. It is only in extreme cases, those which are arbitrary, oppressive, or attended with manifest abuse, that the courts will interfere. In Rosenthal v. Goldsboro, 149 N.C. 128, 62 S.E. 905 (1908), it is said: "It may now be considered as established with us, that our courts will always be most reluctant to interfere with these municipal governments in the exercise of discretionary powers, conferred upon them for the public weal, and will never do so unless their action should be so clearly unreasonable as to amount to an oppressive and manifest abuse of their discretion. This position is, we think, supported by the better reason, and is in accord with the decided weight of authority." Harden v. Raleigh, 192 N.C. 395, 135 S.E. 151 (1926).

The decisions of the board of adjustment are final, subject to the right of the courts to review errors in law and to give relief against its orders which are arbitrary, oppressive, or attended with manifest abuse of authority. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946); County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Review of Questions of Fact.—The writ of certiorari is a writ to bring the matter before the court, upon the evidence presented by the record itself, for review of alleged errors of law. It does not lie to review questions of fact to be determined by evidence outside the record. In re Pine Hill Cemeteries, 219 N.C. 735, 15 S.E.2d 1 (1941). See Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946); Jarrell v. Board of Adjustment for High Point, 258 N.C. 476, 128 S.E.2d 879 (1963).

Determination of questions of fact by the board of adjustment will not be disturbed when its findings are supported by evidence and are made in good faith. Application of Hasting, 252 N.C. 327, 113 S.E.2d 433 (1960).

§ 160A-389. Remedies.—If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Part or of any ordinance or other regulation made under authority conferred thereby, the city, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises. (1923, c. 250, s. 8; C. S., s. 2776(y); 1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-381.

Editor's Note.—See 13 N.C.L. Rev. 235.

Use of Injunction Authorized.—Former § 160-179 expressly authorized the use of the injunctive power of the court to enjoin violations of zoning ordinances. Raleigh v. Morand, 247 N.C. 363, 100 S.E.2d 870 (1957); New Bern v. Walker, 255 N.C. 355, 121 S.E.2d 544 (1961).

Expanding Ordinary Equity Jurisdiction.—Former § 160-179 conferred jurisdiction beyond the scope of the ordinary equity jurisdiction in enjoining the creation of a nuisance and provided a statutory injunction to prevent the violation of municipal ordinances enacted in the exercise of the police power. Fayetteville v. Spur Distributing Co., 216 N.C. 596, 5 S.E.2d 838 (1939). For note on this case, see 18 N.C.L. Rev. 255.

Former § 160-179 enlarged the scope of the ordinary equity jurisdiction and provided a statutory injunction to be applied to acts and conditions ordinarily considered as being beyond equity interference. New Bern v. Walker, 255 N.C. 355, 121 S.E.2d 544 (1961).

Section Applies Only to Regulations Promulgated under Part.—The equitable remedy of injunction authorized applies only to the enforcement of zoning regulations promulgated under the enabling act. Clinton v. Ross, 226 N.C. 682, 40 S.E.2d 593 (1946).

In enacting and enforcing zoning regulations, a municipality acts as a governmental agency and exercises the police power of the State. Town of Hillsborough v. Smith, 10 N.C. App. 70, 178 S.E.2d 18 (1970).

And Does Not Waive Immunity by Action under This Section.—Former § 160-179 authorized a municipality to institute an action to restrain a violation of its governmental immunity. A municipality does not waive that immunity by the mere act of instituting a civil action. Town of Hillsborough v. Smith, 10 N.C. App. 70, 178 S.E.2d 18 (1970).

Prior Nonconforming Use. — An ordinance prohibiting the operation of tobacco sales warehouses in certain sections of a municipality cannot be enforced by injunction as to a warehouse in operation prior to the adoption of zoning regulations by the municipality even if the ordinance be deemed a part of the later adopted zoning regulations where zoning ordinance expressly excludes from its operation nonconforming uses existing prior to its adoption. Clinton v. Ross, 226 N.C. 682, 40 S.E.2d 593 (1946).

A municipal corporation was held not to be estopped from enforcing a valid zoning regulation by obtaining an injunction under this section because of the conduct of its officials in permitting or even encouraging its violation by issuing a permit for a permissive use with knowledge that the owner intended to use it for a prohibited purpose or by acquiescing in such unlawful use over a period of years. Raleigh v. Fisher, 232 N.C. 629, 61 S.E.2d 897 (1950).

§ **160A-390. Conflict with other laws.**—When regulations made under authority of this Part require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, regulations made under authority of this Part shall govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this Part, the provisions of that statute or local ordinance or regulation shall govern. (1923, c. 250, s. 9; C. S., s. 2776(z); 1971, c. 698, s. 1.)

§ **160A-391. Other statutes not repealed.**—This Part shall not repeal any zoning act or city planning act, local or general, now in force, except those that are repugnant to or inconsistent herewith. This Part shall be construed to be an enlargement of the duties, powers, and authority contained in other laws authorizing the appointment and proper functioning of city planning commissions or zoning commissions by any city or town in the State of North Carolina. (1923, c. 250, s. 11; C. S., s. 2776(aa); 1971, c. 698, s. 1.)

§ **160A-392. Part applicable to buildings constructed by State and its subdivisions.**—All of the provisions of this Part are hereby made applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions. (1951, c. 1203, s. 1; 1971, c. 698, s. 1.)

§§ **160A-393, 160A-394:** Reserved for future codification purposes.

Part 3A. Historic Districts.

§ **160A-395. Exercise of powers under this Part by counties as well as cities; designation of historic districts.**—The term "municipal governing body" or "municipal legislative body" as used in this Part shall be deemed to include the governing board or legislative board of a county, to the end that counties may exercise the same powers as cities with respect to the establishment of historic districts.

Any such legislative body may, as part of a zoning ordinance enacted or amended pursuant to this Article, designate (and from time to time amend) one or more historic districts within the area subject to the ordinance. Such ordinance may treat historic districts either as a separate use-district classification or as districts which overlap other zoning districts. Where historic districts are designated as separate use-districts, the zoning ordinances may include among permitted uses those uses found by the historic district commission to have existed during the period sought to be restored or preserved, or to be compatible with the authentic restoration or preservation of the district. No historic district or districts shall be designated until:

(1) The local planning board shall have made an investigation and report on the historic significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and shall have prepared a description of the boundaries of such district, and

(2) The State Department of Archives and History, acting through such agent or employee as may be designated by its Director, shall have made an analysis of and recommendations concerning, such report and description of proposed boundaries. Failure of the department to submit its analysis and recommendations to the municipal governing body within 60 days after a written request for such analysis has been mailed to it shall relieve the municipal governing body of any responsibility for awaiting such analysis, and said body may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

The municipal governing body may also, in its discretion, refer the planning board's report and proposed boundaries to any local historic sites commission or other interested body for its recommendations prior to taking action to amend the zoning ordinance.

On receipt of these reports and recommendations, the municipal legislative body may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions. (1965, c. 504, § 2; 1971, c. 884, ss. 1, 2, 4; c. 896, s. 7.)

Cross References.—As to historic properties commission, see §§ 157A-1 to 157A-13. As to designation of members of historic district commission as historic properties commission, see § 157A-2.

Editor's Note. — Sections 160A-395 to 160A-399 were originally codified as §§ 160-178.1 to 160-178.5. They were transferred to their present position by Session Laws 1971, c. 896, s. 7, effective Jan. 1, 1972.

As enacted in 1965, §§ 160A-395 to 160A-399 were applicable to only certain named cities and towns and were therefore not codified in the General Statutes. They were made statewide in application by Session Laws 1971, c. 884. The 1971 act also amended this section by deleting "zoning commission or" following "local planning board" near the beginning of subdivision (1).

§ **160A-396. Historic district commission.**—In the event that a municipal legislative body chooses to designate one or more historic districts, it shall appoint a historic district commission. Such commission shall consist of not less than three nor more than nine members, as specified by the municipal legislative body. A majority of the members shall be qualified by special interest, knowledge, or training in such fields as history or architecture. All members shall be residents of the county, and a majority of the members shall be residents of the municipality, within the zoning jurisdiction of which the historic district is located. Members shall be appointed for such terms (not to exceed four years, but with eligibility for reappointment) as shall be specified by the municipal legislative body. (1965, c. 504, s. 2; 1971, c. 884, s. 2; c. 896, s. 7.)

§ 160A-397. Certificate of appropriateness required.—From and after the designation of a historic district, no exterior portion of any building or other structure (including stone walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, or moved within such district until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by the historic district commission. The municipality shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for purposes of constructing or altering structures. A certificate of appropriateness shall be required whether or not a building permit is required.

For purposes of this Article, "exterior architectural features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the color, the kind and texture of the building material, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior architectural features" shall be construed to mean the style, material, size, and location of all such signs.

The commission shall not consider interior arrangement and shall take no action under this section except for the purpose of preventing the construction, reconstruction, alteration, restoration, or moving of buildings, structures, appurtenant fixtures, or outdoor advertising signs in the historic district which would be incongruous with the historic aspects of the district.

Prior to issuance or denial of a certificate of appropriateness the commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application. An appeal may be taken to the Board of Adjustment from the commission's action in granting or denying the certificate, in the same manner as any other appeal to such board. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the superior court of the county in which the municipality is located.

The North Carolina Department of Archives and History, acting through any agent or employee designated by its Director, or the North Carolina Advisory Council on Historic Preservation, shall, either upon the request of the Department or at the initiative of the historic district commission, be given an opportunity to review, comment and make recommendations upon the substance and effect of any application for a certificate of appropriateness in any historic district established pursuant to G.S. 160-395 through 160-399. Its comments and recommendations may be provided in writing to the historic district commission or made orally at any public hearing held in connection with the application. The historic district commission shall consider these comments and recommendations prior to the issuance of a certificate of appropriateness. If any certificate is issued contrary to the recommendations of the Department, the historic district commission shall enter the reasons therefor in the minutes of the meeting at which such action is taken, and a copy of the minutes shall be forwarded to the Department by the commission's secretary. If the Department does not submit its comments or recommendations in connection with any application within 30 days following receipt by the Department of any materials needed for its review of the application, whether such review is at the request of the Department or the historic district commission, the commission and any city or county governing board shall be relieved of any esponsibility to consider those comments and recommendations. In this case, the ertificate of appropriateness may thereafter be issued without regard to the reuirements of this paragraph. (1965, c. 504, s. 2; 1971, c. 884, ss. 2, 5; c. 896, . 7.)

Editor's Note. — The 1971 amendment dded the last paragraph.

§ **160A-398. Certain changes not prohibited.**—Nothing in this Article hall be construed to prevent the ordinary maintenance or repair of any exterior rchitectural feature in a historic district which does not involve a change in design, naterial, color, or outer appearance thereof, nor to prevent the construction, recontruction, alteration, restoration, or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because f an unsafe or dangerous condition. (1965, c. 504, s. 2; 1971, c. 884, s. 2; c. 896, . 7.)

§ **160A-399. Delay in demolition of historic buildings.** — From and fter the designation of a historic district, no building or structure therein shall be lemolished or otherwise removed until the owner thereof shall have given the istoric district commission 90 days' written notice of his proposed action. During uch 90-day period the historic district commission may negotiate with the owner nd with any other parties in an effort to find a means of preserving the building. f the historic district commission finds that the building involved has no particular istoric significance or value toward maintaining the character of the district, it nay waive all or part of such 90-day period and authorize earlier demolition or emoval. (1965, c. 504, s. 2; 1971, c. 884, s. 2; c. 896, s. 7.)

§ **160A-400**: Reserved for future codification purposes.

Part 4. Acquisition of Open Space.

§ **160A-401. Legislative intent.**—It is the intent of the General Assembly n enacting this Part to provide a means whereby any county or city may acuire, by purchase, gift, grant, bequest, devise, lease, or otherwise, and through he expenditure of public funds, the fee or any lesser interest or right in real roperty in order to preserve, through limitation of their future use, open spaces nd areas for public use and enjoyment. (1963, c. 1129, s. 1; 1971, c. 698, s. 1.)

§ **160A-402. Finding of necessity.**—The General Assembly finds that the apid growth and spread of urban development in the State is encroaching upon, r eliminating, many open areas and spaces of varied size and character, including nany having significant scenic or esthetic values, which areas and spaces if preerved and maintained in their present open state would constitute important hysical, social, esthetic, or economic assets to existing and impending urban levelopment. The General Assembly declares that it is necessary for sound and roper urban development and in the public interest of the people of this State for ny county or city to expend or advance public funds for, or to accept by purhase, gift, grant, bequest, devise, lease, or otherwise, the fee or any lesser interest r right in real property so as to acquire, maintain, improve, protect, limit the uture use of, or otherwise conserve open spaces and areas within their respective urisdictions as defined by this Article.

The General Assembly declares that the acquisition of interests or rights in real roperty for the preservation of open spaces and areas constitutes a public purose for which public funds may be expended or advanced. (1963, c. 1129, s. 2; 1971, c. 698, s. 1.)

§ **160A-403. Counties or cities authorized to acquire and reconvey eal property.**—Any county or city in the State may acquire by purchase, gift, grant, bequest, devise, lease, or otherwise, the fee or any lesser interest, development right, easement, covenant, or other contractual right of or to real property within its respective jurisdiction, when it finds that the acquisition is necessary to achieve the purposes of this Part. Any county or city may also acquire the fee to any property for the purpose of conveying or leasing the property back to its original owner or other person under covenants or other contractual arrangements that will limit the future use of the property in accordance with the purposes of this Part, but when this is done, the property may be conveyed back to its original owner but to no other person by private sale. (1963, c. 1129, s. 3; 1971, c. 698, s. 1.)

§ **160A-404. Joint action by governing bodies.**—Any county or city may enter into any agreement with any other county or city for the purpose of jointly exercising the authority granted by this Part. (1963, c. 1129, s. 4; 1971, c. 698, s. 1.)

§ **160A-405. Powers of governing bodies.**—Any county or city, in order to exercise the authority granted by this Part, may:

(1) Enter into and carry out contracts with the State or federal government or any agencies thereof under which grants or other assistance are made to the county or city;

(2) Accept any assistance or funds that may be granted by the State or federal government with or without a contract;

(3) Agree to and comply with any reasonable conditions imposed upon grants;

(4) Make expenditures from any funds so granted. (1963, c. 1129, s. 5; 1971, c. 698, s. 1.)

§ **160A-406. Appropriations and taxes authorized; special tax elections.**—For the purposes set forth in this Article any county or city governing body may appropriate any nontax funds, and in addition may make appropriations and levy annually taxes therefor as a special purpose, in addition to any allowed by the Constitution. No tax shall be levied for the purposes of this Article unless it shall have first been approved by the qualified voters of the county or city in a special election called by the governing body for that purpose. (1963, c. 1129, s. 6; 1971, c. 698, s. 1.)

§ **160A-407. Definitions.**—(a) For the purpose of this Part an "open space" or "open area" is any space or area (i) characterized by great natural scenic beauty or (ii) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources.

(b) For the purposes of this Part "open space" or "open area" and the "public use and enjoyment" of interests or rights in real property shall also include open space land and open space uses. The term "open space land" means any undeveloped or predominantly undeveloped land in an urban area that has value for one or more of the following purposes: (i) park and recreational purposes, (ii) conservation of land and other natural resources, or (iii) historic or scenic purposes. The term "open space uses" means any use of open space land for (i) park and recreational purposes, (ii) conservation of land and other natural resources or (iii) historic or scenic purposes. (1963, c. 1129, s. 7; 1969, c. 35, s. 1; 1971, c. 698, s. 1.)

§§ **160A-408 to 160A-410**: Reserved for future codification purposes.

Part 5. Building Inspection.

§ **160A-411. Inspection department.**—Every city in the State is hereby authorized to create an inspection department, and shall appoint one or more inspectors who may be given the titles of building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire prevention inspector, or deputy or assistant inspector, or such other titles as may be generally descriptive of the duties assigned. The department may be headed by a superintendent or director of inspections. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-412. Duties and responsibilities.**—The duties and responsibilities of an inspection department and of the inspectors therein shall be to enforce within their territorial jurisdiction State and local laws relating to

(1) The construction of buildings and other structures;
(2) The installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems;
(3) The maintenance of buildings and other structures in a safe, sanitary, and healthful condition;
(4) Other matters that may be specified by the city council.

These duties shall include the receipt of applications for permits and the issuance or denial of permits, the making of any necessary inspections, the issuance or denial of certificates of compliance, the issuance of orders to correct violations, the bringing of judicial actions against actual or threatened violations, the keeping of adequate records, and any other actions that may be required in order adequately to enforce those laws. The city council shall have the authority to enact reasonable and appropriate provisions governing the enforcement of those laws. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-413. Joint inspection department; other arrangements.**—A city council may enter into and carry out contracts with another city, county, or combination thereof under which the parties agree to create and support a joint inspection department for the enforcement of State and local laws specified in the agreement. The governing boards of the contracting parties are authorized to make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a city council may designate an inspector from any other city or county to serve as a member of its inspection department with the approval of the governing body of the other city or county. The inspector shall, while exercising the duties of the position, be considered a municipal employee.

The city council of any city may request the board of county commissioners of the county in which the city is located to direct one or more county building inspectors to exercise their powers within part or all of the city's jurisdiction, and they shall thereupon be empowered to do so until the city council officially withdraws its request. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-414. Financial support.**—The city council may appropriate for the support of the inspection department any funds that it deems necessary. It may provide for paying inspectors fixed salaries or it may reimburse them for their services by paying over part or all of any fees collected. It shall have power to fix reasonable fees for issuance of permits, inspections, and other services of the inspection department. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-415. Conflicts of interest.**—No member of an inspection department shall be financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building within the city's jurisdiction or any part or system thereof, or in the making of plans or specifications therefor, unless he is the owner of the building. No member of an inspection department shall engage in any work that is inconsistent with his duties or with the interest of the city. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ 160A-416. Failure to perform duties.—If any member of an inspection department shall willfully fail to perform the duties required of him by law, or willfully shall improperly issue a permit, or shall give a certificate of compliance without first making the inspections required by law, or willfully shall improperly give a certificate of compliance, he shall be guilty of a misdemeanor. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ 160A-417. Permits.—No person shall commence or proceed with

(1) The construction, reconstruction, alteration, repair, removal, or demolition of any building or structure,

(2) The installation, extension, or general repair of any plumbing system,

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system, or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment,

without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for shall be issued unless the work is to be performed by such a duly licensed contractor. Violation of this section shall constitute a misdemeanor. (1905, c. 506, s. 26; Rev., s. 2986; 1915, c. 192, s. 3; C. S., s. 2748; 1957, c. 817; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

Editor's Note. — The cases cited in the following note were decided under former § 160-122 and prior similar provisions.

Permit Required before Construction or Repair of Building. — Former § 160-126 (prior to 1969) required the owner of the property to obtain a permit before constructing or repairing a building. Warner v. W & O, Inc., 263 N.C. 37, 138 S.E.2d 782 (1964). See State v. Eubanks, 154 N.C. 628, 70 S.E. 466 (1911).

But Permit without Expenditure Is Not Existing Use Protected against Zoning Amendment.—If a property owner in good faith makes expenditures in reliance on a building permit issued to him, his right to construct the building will be protected as an existing use upon later amendment of the municipal zoning regulations, but the mere issuance of a building permit alone creates no property right in him, and he may not remain inactive and thereby deny the municipality the right to make needed changes in its ordinances. Warner v. W & O, Inc., 263 N.C. 37, 138 S.E.2d 782 (1964).

Rule Must Be Uniform.—The ordinance of a city providing that no person shall erect within the city limits any house or building of any kind, or add to, improve or change any building without having first obtained permission from the board of aldermen, is void, for the reason that it does not prescribe a uniform rule of action for governing the exercises of the discretion of the aldermen, but on the contrary, leaves the rights of property subject to their arbitrary discretion. State v. Tenant, 110 N.C. 609, 14 S.E. 387 (1892).

Permit Secured by Mandamus.—Where a city, under an ordinance, with legislative authority in such matters, has issued a permit to build an additional room to a residence and thereafter has recalled the permit pending the settlement of a dispute as to whether it would be situate upon an alley claimed to have been widened and upon the finding by the jury that the alley had not been widened and that the room would not be thereon, a mandamus is the proper remedy, though the form of the issue was incorrect. Clinard v. Winston-Salem, 173 N.C. 356, 91 S.E. 1039 (1917).

§ **160A-418. Time limitations on validity of permits.**—A permit issued pursuant to G.S. 160A-417 shall expire by limitation six months, or any lesser time fixed by ordinance of the city council, after the date of issuance if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of 12 months, the permit therefor shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a new permit has been secured. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-419. Changes in work.** — After a permit has been issued, no changes or deviations from the terms of the application, plans and specifications, or the permit, except where changes or deviations are clearly permissible under the State Building Code, shall be made until specific written approval of proposed changes or deviations has been obtained from the inspection department. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-420. Inspections of work in progress.**—As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-421. Stop orders.**—Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped. The stop order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed. The owner or builder may appeal from a stop order to the North Carolina Commissioner of Insurance within a period of five days after the order is issued. Notice of appeal shall be given in writing to the Commissioner of Insurance, with a copy to the local inspector. The Commissioner of Insurance shall promptly conduct a hearing at which the appellant and the inspector shall be permitted to submit relevant evidence, and shall rule on the appeal as expeditiously as possible. Pending the ruling by the Commissioner of Insurance on an appeal no further work shall take place in violation of a stop order. Violation of a stop order shall constitute a misdemeanor. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-422. Revocation of permits.**—The appropriate inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable State or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-423. Certificates of compliance.**—At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection, and if he finds that the completed work complies with all applicable State and local laws and with the terms of the permit, he shall issue a certificate of compliance. No new building or part thereof shall be occupied, and no addition or enlargement of any existing building after being altered or moved shall be occupied, until the inspection department has issued a certificate of compliance. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building that the inspector finds may safely be occupied prior to final completion of the entire building. Violation of this section shall constitute a misdemeanor. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-424. Periodic inspections.**—The inspection department shall make periodic inspections, subject to the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in structures within its territorial jurisdiction. In addition, it shall make inspections when it has reason to believe that such conditions may exist in a particular structure. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-425. Defects in buildings to be corrected.**—When a local inspector finds any defects in a building, or finds that the building has not been constructed in accordance with the applicable State and local laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be his duty to notify the owner or occupant of the building of its defects, hazardous conditions, or failure to comply with law. The owner of the contents shall immediately remedy the defects, hazardous conditions, or violations of law in the property he owns. (1905, c. 506, s. 28; Rev., s. 3009; 1915, c. 192, s. 14; C. S., s. 2771; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-426. Unsafe buildings condemned.**—Every building which shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building. (1905, c. 506, s. 15; Rev., s. 3010; 1915, c. 192, s. 15; C. S., s. 2773; 1929, c. 199, s. 1; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-427. Removing notice from condemned building.**—If any person shall remove any notice that has been affixed to any building or structure by a local inspector of any municipality and that states the dangerous character of the building or structure, he shall be guilty of a misdemeanor. (1905, c. 506, s. 15; Rev., s. 3799; C. S., s. 2775; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-428. Action in event of failure to take corrective action.**—If the owner of a building or structure that has been condemned as unsafe pursuant to G.S. 160A-426 shall fail to take prompt corrective action, the local inspector shall give him written notice, by certified or registered mail to his last known address or by personal service,

(1) That the building or structure is in a condition that appears to constitute a fire or safety hazard or to be dangerous to life, health, or other property;
(2) That a hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
(3) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the city at least once not later than one week prior to the hearing. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-429. Order to take corrective action.**—If, upon a hearing held pursuant to the notice prescribed in G.S. 160A-428, the inspector shall find that the building or structure is in condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, he shall make an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps, within such period, not less than 60 days, as the inspector may prescribe. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-430. Appeal; finality of order if not appealed.**—Any owner who has received an order under G.S. 160A-429 may appeal from the order to the city council by giving notice of appeal in writing to the inspector and to the city clerk within 10 days following issuance of the order. In the absence of an appeal, the order of the inspector shall be final. The city council shall hear an appeal within a reasonable time and may modify and affirm, or revoke the order. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-431. Failure to comply with order.**—If the owner of a building or structure fails to comply with an order issued pursuant to G.S. 160A-429 from which no appeal has been taken, or fails to comply with an order of the city council following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1905, c. 506, s. 15; Rev., s. 3802; 1915, c. 192, s. 19; C. S., s. 2774; 1929, c. 199, s. 2; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-432. Equitable enforcement.** — Whenever any violation is denominated a misdemeanor under the provisions of this Part, the city, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-433. Records and reports.**—The inspection department shall keep complete, permanent, and accurate records in convenient form of all applications received, permits issued, inspections and reinspections made, defects found, certificates of compliance granted, and all other work and activities of the department. Periodic reports shall be submitted to the city council and to the Commissioner of Insurance as they shall by ordinance, rule, or regulation require. (1905, c. 506, ss. 30, 31; Rev., ss. 3004, 3005; 1915, c. 192, s. 12; C. S., ss. 2766, 2767; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-434. Appeals in general.** — Unless otherwise provided by law, appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws shall be taken to the Commissioner of Insurance or other official specified in G.S. 143-139, by filing a written notice with him and with the inspection department within a period of 10 days after the order, decision, or determination. Further appeals may be taken to the State Building Code Council or to the courts as provided by law. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-435. Establishment of fire limits.**—The city council of every incorporated city shall pass one or more ordinances establishing and defining fire limits, which shall include the principal business portions of the city and which shall be known as primary fire limits. In addition, the council may, in its discretion, establish and define one or more separate areas within the city as secondary fire limits. (1905, c. 506, s. 7; Rev., s. 2985; 1917, c. 136, sub-ch. 8, s. 2; C. S., ss. 2746, 2802; 1961, c. 240; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

Power Discretionary.—The courts will not pass upon the reasonableness of fire limits established by an incorporated town under authority conferred by the legislature, at least where the limits established appear to be reasonable and without palpable oppression or injustice done. State v. Lawing, 164 N.C. 492, 80 S.E. 69 (1913) (decided under former similar provisions).

§ **160A-436. Restrictions within primary fire limits.** — Within the primary fire limits of any city, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall hereafter be erected, altered, repaired, or moved (either into the limits or from one place to another within the limits), except upon the permit of the local inspection department approved by the Commissioner of Insurance. The city council may make additional regulations for the prevention, extinguishment, or mitigation of fires within the primary fire limits. (1905, c. 506, s. 8; Rev., s. 2988; 1915, c. 192, s. 5; C. S., s. 2750; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

Reasonableness of Ordinances.—While it might be unreasonable to prohibit even the slightest repairs to wooden buildings standing within the fire limits prior to the passage of a statute or ordinance establishing such limits, the power to prevent repairs is delegated and presumably exercised for the protection of property, and where a wooden structure within the bounds is partially destroyed by fire already, it is not unreasonable to require a new roof to be made of material less liable to combustion, or to forbid the repairs altogether when the damage to the building is serious and to that end to compel the owners to give notice to the town authorities of their purpose to repair, and of the character of the contemplated work. State v. Johnson, 114 N.C. 846, 19 S.E. 599 (1894) (decided under former similar provisions).

§ **160A-437. Restriction within secondary fire limits.**—Within any secondary fire limits of any city or town, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall be erected, altered, repaired, or moved except in accordance with any rules and regulations established by ordinance of the areas. (1905, c. 506, s. 8; Rev., s. 2988; 1915, c. 192, s. 5; C. S., s. 2750; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ **160A-438. Failure to establish primary fire limits.**—If the council of any city shall fail or refuse to establish and define the primary fire limits of the city as required by law, after having such failure or refusal called to their attention in writing by the State Commissioner of Insurance, the Commissioner shall have the power to establish the limits upon making a determination that they are necessary and in the public interest. (1905, c. 506, s. 7; Rev., s. 3608; C. S., s. 2747; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§§ **160A-439, 160A-440:** Reserved for future codification purposes.

Part 6. Minimum Housing Standards.

§ **160A-441. Exercise of police power authorized.**—It is hereby found and declared that the existence and occupation of dwellings in this State that are unfit for human habitation are inimical to the welfare and dangerous and injurious to the health, safety and morals of the people of this State, and that a public necessity exists for the repair, closing or demolition of such dwellings. Whenever any city or county of this State finds that there exists in the city or county dwellings that are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the city or county, power is hereby conferred upon the city or county to exercise its police powers to repair, close or demolish the dwellings in the manner herein provided. No ordinance enacted by the governing body of a county pursuant to this Article shall be applicable within the corporate limits of any city unless the city council of the city has by resolution expressly given its approval thereto. (1939, c. 287, s. 1; 1969, c. 913, s. 1; 1971, c. 698, s. 1.)

Editor's Note.—The cases and opinions of the Attorney General cited in the annotations to the sections in this Part were decided or issued under former §§ 160-182 to 160-191.

For article on the constitutional problems of housing codes as a means of preventing urban blight, see 6 Wake Forest Intra. L. Rev. 255 (1970). For note on retaliatory evictions and housing code enforcement, see 49 N.C.L. Rev. 569 (1971).

Exercise of Police Power by Municipality Authorized.—See State v. Walker, 265 N.C. 482, 144 S.E.2d 419 (1965).

Incorporation of Provisions in City Code.—The city code of the city of Morganton, §§ 8-85 to 8-99, substantially incorporated the provisions of former §§ 160-183 to 160-189, the governing body of the city having found to exist therein the conditions specified in former § 160-182 as prerequisites to the adoption of an ordinance for the closing of a dwelling house unfit for human habitation. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

Constitutionality.—It is not unconstitutional for a municipality to take upon itself a duty to see that repairs to buildings within its domain will be made in such manner as will prevent fire and structural hazards. This duty it is bound to exercise to protect the safety and health of the general public. To require a permit in order to implement such reasonable supervision is not in violation of any provision of the Constitution of the United States. Walker v. North Carolina, 262 F. Supp. 102 (W.D.N.C. 1966).

Where it appears from the findings of a city housing commission that a house can be repaired so as to comply with the city's housing code, be suitable for human habitation and be no longer a threat to public health, safety, morals or general welfare, to require its destruction, without giving the owner a reasonable opportunity thus to remove the existing threat to the public health, safety and welfare, is arbitrary and unreasonable. Such power may not be delegated to or exercised by a municipal corporation of this State by reason of N.C. Const. Art. I, § 19. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

Unconstitutional Action by Municipality.—An action by a municipality, pursuant to an ordinance adopted under the authority of former § 160-182, in ordering the demolition of a dwelling house without compensation to the owner thereof and in charging the expense of demolition to the owner upon his failure to demolish the house himself, such action being based upon findings by the city building inspector that the house was unfit for human habitation and that the repairs necessary to bring the house into conformity with the housing code would cost 60% or more of the present value of the house, was violative of the Law of the Land Clause of the State Constitution, where (1) the house could be repaired so as to comply with the housing code and (2) the owner was not afforded a reasonable opportunity to repair the house. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

Alternative Remedy Proposal Not Required before Asserting Constitutional Right.—A homeowner who is faced with a municipal housing inspector's order giving him no alternative but to demolish his home that was declared uninhabitable by the municipality or to pay the expense of a demolition by the municipality, is not required to propose an alternative remedy for the condition of the house before asserting his constitutional right in the courts. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

Public Interference Warranted Only to Secure Public Safety or Protect Health.—The only warrant for public interference with a person's building is to secure public safety and to protect the health of those occupying the building. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

City May Not Destroy Private Property for Aesthetic Reasons Alone.—A municipal corporation has no inherent police power, but may exercise such power only to the extent that it has been conferred upon the city by statute. Obviously, the legislature cannot confer upon a city a power which the legislature, itself, does not have. Consequently, a city may not, under the guise of the police power, destroy private property for aesthetic reasons alone. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

Desirable as it might be from an aesthetic point of view to have public control of private buildings, the law does not permit an invasion of private rights on such grounds. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

Compensation to Owner Not Required.—It is quite true that the police power of the State, which it may delegate to its municipal corporation, extends to the prohibition of a use of private property which may reasonably be deemed to threaten the public health, safety, or morals or the general welfare, and that when necessary to safeguard such public interest, it may be exercised, without payment of compensation to the owner, even though the property is thereby rendered substantially worthless. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

§ **160A-442. Definitions.**—The following terms shall have the meanings whenever used or referred to as indicated when used in this Part unless a different meaning clearly appears from the context:

(1) "City" means any incorporated city or any county.

(2) "Dwelling" means any building, or structure, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

(3) "Governing body" means the council, board of commissioners, or other legislative body, charged with governing a city or county.

(4) "Owner" means the holder of the title in fee simple and every mortgagee of record.

(5) "Parties in interest" means all individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

(6) "Public authority" means any housing authority or any officer who is in charge of any department or branch of the government of the city, county, or State relating to health, fire, building regulations, or other activities concerning dwellings in the city.

(7) "Public officer" means the officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by the ordinances and by this Article. (1939, c. 287, s. 2; 1941, c. 140; 1953, c. 675, s. 29; 1961, c. 398, s. 1; 1969, c. 913, s. 2; 1971, c. 698, s. 1.)

§ **160A-443. Ordinance authorized as to repair, closing and demolition; order of public officer.**—Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinance.

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(3) That if, after notice and hearing, the public officer determines that the

dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,

a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this cost as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this cost as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling.

(4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a misdemeanor.

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in subdivisions (4) and (5) shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(6) That the amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise. (1939, c. 287, c. 3; 1969, c. 868, ss. 1, 2; c. 1065, s. 2; 1971, c. 698, s. 1.)

Cross Reference.—See Editor's note to § 160A-441.

Substantial compliance with the procedures required is a condition precedent to the authority of the city to forbid the use of a dwelling house for human habitation. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

Variation in Wording of Notice. — The variation between the wording of a posted notice reading "This Building Is Unsafe, And Its Use For Occupancy Has Been Prohibited By The Building Official" and that notice prescribed by statute is not material. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

Priority of Demolition Lien over Welfare Lien.—See opinion of Attorney General to Mr. Cicero P. Yow, Wilmington City Attorney, 2/23/70; Mr. James C. Fox, New Hanover County Attorney, 2/25/70.

§ **160A-444. Standards.**—An ordinance adopted by a city under this Article shall provide that the public officer may determine that a dwelling is unfit for human habitation if he finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the city. Defective conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness. The ordinances may provide additional standards to guide the public officers, or his agents, in determining the fitness of a dwelling for human habitation. (1939, c. 287, s. 4; 1971, c. 698, s. 1.)

§ **160A-445. Service of complaints and orders.**—Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Article shall be served upon persons either personally or by registered or certified mail. If the whereabouts of persons is unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the persons may be made by publication in the manner prescribed in the Rules of Civil Procedure. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected. (1939, c. 287, s. 5; 1965, c. 1055; 1969, c. 868, ss. 3, 4; 1971, c. 698, s. 1.)

Editor's Note.—The Rules of Civil Procedure are found in § 1A-1.

§ **160A-446. Remedies.** — (a) The governing body may provide for the creation and organization of a housing appeals board to which appeals may be taken from any decision or order of the public officer, or may provide for such appeals to be heard and determined by its zoning board of adjustment.

(b) The housing appeals board, if created, shall consist of five members to serve for three-year staggered terms. It shall have the power to elect its own officers, to fix the times and places for its meetings, to adopt necessary rules of procedure, and to adopt other rules and regulations for the proper discharge of its duties. It shall keep an accurate record of all its proceedings.

(c) An appeal from any decision or order of the public officer may be taken by any person aggrieved thereby or by any officer, board or commission of the city. Any appeal from the public officer shall be taken within 10 days from the rendering of the decision or service of the order by filing with the public officer and with the board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the public officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the public officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the public officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the public officer certifies to the board, after the notice of appeal is filed with him, that because of facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the public officer, by the board, or by a court of record upon petition made pursuant to subsection (f) of this section.

(d) The appeals board shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the public officer, but the concurring vote of four members of the board shall be necessary to reverse or modify any decision or order of the public officer. The board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(e) Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

(f) Any person aggrieved by an order issued by the public officer or a decision rendered by the board may petition the superior court for an injunction restraining the public officer from carrying out the order or decision and the court may, upon such petition, issue a temporary injunction restraining the public officer pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the court on a petition within 20 days, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this subsection.

(g) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation of this Part or of any ordinance or code adopted under authority of this Part or any valid order or decision of the public officer or board made pursuant to any ordinance or code adopted under authority of this Part, the public officer or board may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or use, to restrain, correct or abate the violation, to prevent the occupancy of the dwelling, or to prevent any illegal act, conduct or use in or about the premises of the dwelling. (1939, c. 287, s. 6; c. 386; 1969, c. 868, s. 5; 1971, c. 698, s. 1.)

§ **160A-447. Compensation to owners of condemned property.**—Nothing in this Part shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of property by the power of eminent domain under the laws of this State, nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State. (1939, c. 386; 1943, c. 196; 1971, c. 698, s. 1.)

§ **160A-448. Additional powers of public officer.**—An ordinance adopted by the governing body of the city may authorize the public officer to exercise any powers necessary or convenient to carry out and effectuate the purpose and provisions of this Article, including the following powers in addition to others herein granted:

(1) To investigate the dwelling conditions in the city in order to determine which dwellings therein are unfit for human habitations;

(2) To administer oaths, affirmations, examine witnesses and receive evidence;

(3) To enter upon premises for the purpose of making examinations in a

manner that will do the least possible inconvenience to the persons in possession;

(4) To appoint and fix the duties of officers, agents and employees necessary to carry out the purposes of the ordinances; and

(5) To delegate any of his functions and powers under the ordinance to other officers and other agents. (1939, c. 287, s. 7; 1971, c. 698, s. 1.)

§ **160A-449. Administration of ordinance.**—The governing body of any city adopting an ordinance under this Part shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in the city for the purpose of determining the fitness of dwellings for human habitation, and for the enforcement and administration of its ordinances adopted under this Part. The city is authorized to make appropriations from its revenues necessary for this purpose and may accept and apply grants or donations to assist it in carrying out the provisions of the ordinances. (1939, c. 287, s. 8; 1971, c. 698, s. 1.)

§ **160A-450. Supplemental nature of Part.**—Nothing in this Part shall be construed to abrogate or impair the powers of the courts or of any department of any city to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this Part shall be in addition and supplemental to the powers conferred by any other law. (1939, c. 287, s. 9; 1971, c. 698, s. 1.)

Part 7. Community Appearance Commissions.

§ **160A-451. Membership and appointment of commission.**—Each municipality and county in the State may create a special commission, to be known as the official appearance commission for the city or county. The commission shall consist of not less than seven nor more than 15 members, to be appointed by the governing body of the municipality or county for such terms, not to exceed four years, as the governing body may by ordinance provide. All members shall be residents of the municipality's or county's area of planning and zoning jurisdiction at the time of appointment. Where possible, appointments shall be made in such a manner as to maintain on the commission at all times a majority of members who have had special training or experience in a design field, such as architecture, landscape design, horticulture, city planning, or a closely related field. Members of the commission may be reimbursed for actual expenses incidental to the performance of their duties within the limits of any funds available to the commission, but shall serve without pay unless otherwise provided in the ordinance establishing the commission. Membership of the commission is declared to be an office that may be held concurrently with any other elective or appointive office pursuant to Article VI, Section 9, of the Constitution. (1971, c. 896, s. 6; c. 1058.)

Editor's Note. — Sections 160A-451 to 160A-455 were enacted as §§ 160-181.11 to 160-181.15. They were transferred to their present position by Session Laws 1971, c. 896, s. 6, effective Jan. 1, 1972.

§ **160A-452. Powers and duties of commission.**—The commission, upon its appointment, shall make careful study of the visual problems and needs of the municipality or county within its area of zoning jurisdiction, and shall make any plans and carry out any programs that will, in accordance with the powers herein granted, enhance and improve the visual quality and aesthetic characteristics of the municipality or county. To this end, the governing board may confer upon the appearance commission the following powers and duties:

(1) To initiate, promote and assist in the implementation of programs of general community beautification in the municipality or county;

(2) To seek to coordinate the activities of individuals, agencies and organi-

zations, public and private, whose plans, activities and programs bear upon the appearance of the municipality or county;

(3) To provide leadership and guidance in matters of area or community design and appearance to individuals, and to public and private organizations, and agencies;

(4) To make studies of the visual characteristics and problems of the municipality or county, including surveys and inventories of an appropriate nature, and to recommend standards and policies of design for the entire area, any portion or neighborhood thereof, or any project to be undertaken;

(5) To prepare both general and specific plans for the improved appearance of the municipality or county. These plans may include the entire area or any part thereof, and may include private as well as public property. The plans shall set forth desirable standards and goals for the aesthetic enhancement of the municipality or county or any part thereof within its area of planning and zoning jurisdiction, including public ways and areas, open spaces, and public and private buildings and projects;

(6) To participate, in any way deemed appropriate by the governing body of the municipality or county and specified in the ordinance establishing the commission, in the implementation of its plans. To this end, the governing body may include in the ordinance the following powers:

  a. To request from the proper officials of any public agency or body, including agencies of the State and its political subdivisions, its plans for public buildings, facilities, or projects to be located within the municipality or its area of planning and zoning jurisdiction of the city or county.

  b. To review these plans and to make recommendations regarding their aesthetic suitability to the appropriate agency, or to the municipal or county planning or governing board. All plans shall be reviewed by the commission in a prompt and expeditious manner, and all recommendations of the commission with regard to any public project shall be made in writing. Copies of the recommendation shall be transmitted promptly to the planning or governing body of the city or county, and to the appropriate agency.

  c. To formulate and recommend to the appropriate municipal planning or governing board the adoption or amendment of ordinances (including the zoning ordinance, subdivision regulations, and other local ordinances regulating the use of property) that will, in the opinion of the commission, serve to enhance the appearance of the municipality and its surrounding areas.

  d. To direct the attention of city or county officials to needed enforcement of any ordinance that may in any way affect the appearance of the city or county.

  e. To seek voluntary adherence to the standards and policies of its plans.

  f. To enter, in the performance of its official duties and at reasonable times, upon private lands and make examinations or surveys.

  g. To promote public interest in and an understanding of its recommendations, studies, and plans, and to that end to prepare, publish and distribute to the public such studies and reports as will, in the opinion of the commission, advance the cause of improved municipal or county appearance.

h. To conduct public meetings and hearings, giving reasonable notice to the public thereof. (1971, c. 896, s. 6; c. 1058.)

§ **160A-453. Staff services; advisory council.**—The commission may recommend to the municipal or county governing board suitable arrangements for the procurement or provision of staff or technical services for the commission, and the governing board may appropriate such amount as it deems necessary to carry out the purposes for which it was created. The commission may establish an advisory council or other committees. (1971, c. 896, s. 6; c. 1058.)

§ **160A-454. Annual report.**—The commission shall, no later than April 15 of each year, submit to the municipal or county governing body a written report of its activities, a statement of its expenditures to date for the current fiscal year, and its requested budget for the next fiscal year. All accounts and funds of the commission shall be administered substantially in accordance with the requirements of the Municipal Fiscal Control Act or the County Fiscal Control Act. (1971, c. 896, s. 6; c. 1058.)

§ **160A-455. Receipt and expenditure of funds.**—The commission may receive contributions from private agencies, foundations, organizations, individuals, the State or federal government, or any other source, in addition to any sums appropriated for its use by the city or county governing body. It may accept and disburse these funds for any purpose within the scope of its authority as herein specified. All sums appropriated by the city or county to further the work and purposes of the commission are deemed to be for a public purpose and a necessary expense. (1971, c. 896, s. 6; c. 1058.)

§§ **160A-456 to 160A-459**: Reserved for future codification purposes.

ARTICLE 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

§ **160A-460. Definitions.**—The words defined in this section shall have the meanings indicated when used in this Part:

(1) "Undertaking" means the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any administrative or governmental power, function, right, privilege, or immunity of local government.

(2) "Unit," or "unit of local government" means a county, city, consolidated city-county, sanitary district, or other local political subdivision, authority, or agency of local government. (1971, c. 698, s. 1.)

§ **160A-461. Interlocal cooperation authorized.** — Any unit of local government in this State and any one or more other units of local government in this State or any other state (to the extent permitted by the laws of the other state) may enter into contracts or agreements with each other in order to execute any undertaking. The contracts and agreements shall be of reasonable duration, as determined by the participating units, and shall be ratified by resolution of the governing board of each unit spread upon its minutes. (1971, c. 698, s. 1.)

§ **160A-462. Joint agencies.**—(a) Units agreeing to an undertaking may establish a joint agency charged with any or all of the responsibility for the undertaking. The units may confer on the joint agency any power, duty, right, or function needed for the execution of the undertaking, except that legal title to all real property necessary to the undertaking shall be held by the participating units individually, or jointly as tenants in common, in such manner and proportion as they may determine.

(b) The participating units may appropriate funds to the joint agency on the basis of an annual budget recommended by the agency and submitted to the governing board of each unit for approval. (1971, c. 698, s. 1.)

§ **160A-463. Personnel.**—(a) The units may agree that any joint agency established under G.S. 160A-462 shall appoint the officers, agents, and employees necessary to execute the undertaking, or that the units jointly shall appoint these personnel, or that one of the units shall appoint the personnel with their services contracted for by the other units or by the joint agency. If the units determine that one unit shall appoint the personnel, the agreement shall provide that the jurisdiction, authority, rights, privileges, and immunities (including coverage under the workmen's compensation laws) which the officers, agents, and employees of the appointing unit enjoy within the territory of that unit shall also be enjoyed by them outside its territory when they are acting pursuant to the agreement and within the scope of their authority or the course of their employment.

(b) When the subject of an undertaking is a sovereign function of government, the exercise of which has been delegated to an officer of each participating unit, the agreement may provide that one officer shall exercise the function for all the participating units, with all of the powers, duties, and obligations that an officer exercising the function in a single unit would have. (1971, c. 698, s. 1.)

§ **160A-464. Provisions of the agreement.**—Any contract or agreement establishing an undertaking shall specify:

(1) The purpose or purposes of the contract or agreement;
(2) The duration of the agreement;
(3) If a joint agency is established, its composition, organization, and nature, together with the powers conferred on it;
(4) The manner of appointing the personnel necessary to the execution of the undertaking;
(5) The method of financing the undertaking, including the apportionment of costs and revenues;
(6) The formula for ownership of real property involved in the undertaking, and procedures for the disposition of such property when the contract or agreement expires or is terminated;
(7) Methods for amending the contract or agreement;
(8) Methods for terminating the contract or agreement;
(9) Any other necessary or proper matter. (1971, c. 698, s. 1.)

§ **160A-465. Exceptions.**—This Part shall not apply to any undertaking any part of which is subject to approval by a department or agency of the State. (1971, c. 698, s. 1.)

§§ **160A-466 to 160A-469**: Reserved for future codification purposes.

Part 2. Regional Councils of Governments.

§ **160A-470. Creation of regional councils.**—Any two or more units of local government may create a regional council of governments by adopting identical concurrent resolutions to that effect in accordance with the provisions and procedures of this Part. To the extent permitted by the laws of its state, a local government in a state adjoining North Carolina may participate in regional councils of governments organized under this Part to the same extent as if it were located in this State. The concurrent resolutions creating a regional council of governments, and any amendments thereto, will be referred to in this Part as the "charter" of the regional council. (1971, c. 698, s. 1.)

§ **160A-471. Membership.**—Each unit of local government initially adopting a concurrent resolution under G.S. 160A-470 shall become a member of the regional council. Thereafter, any local government may join the regional council by ratifying its charter and by being admitted by unanimous vote of the existing members. All of the rights and privileges of membership in a regional council of governments shall be exercised on behalf of its member governments by their delegates to the council. (1971, c. 698, s. 1.)

§ **160A-472. Contents of charter.**—The charter of a regional council of governments shall:

(1) Specify the name of the council;
(2) Establish the powers, duties, and functions that it may exercise and perform;
(3) Establish the number of delegates to represent the member governments, fix their terms of office, provide methods for filling vacancies, and prescribe the compensation and allowances, if any, to be paid to delegates;
(4) Set out the method of determining the financial support that will be given to the council by each member government;
(5) Establish a method for amending the charter, and for dissolving the council and liquidating its assets and liabilities.

In addition, the charter may, but need not, contain rules and regulations for the conduct of council business and any other matters pertaining to the organization, powers, and functioning of the council that the member governments deem appropriate. (1971, c. 698, s. 1.)

§ **160A-473. Organization of council.**—Upon its creation, a regional council shall meet at a time and place agreed upon by its member governments and shall organize by electing a chairman and any other officers that the charter may specify or the delegates may deem advisable. The council shall then adopt bylaws for the conduct of its business. All meetings of the council shall be open to the public. (1971, c. 698, s. 1.)

§ **160A-474. Withdrawal from council.**—Any member government may withdraw from a regional council at the end of any fiscal year by giving at least 60 days' written notice to each of the other members. Withdrawal of a member government shall not dissolve the council if at least two members remain. (1971, c. 698, s. 1.)

§ **160A-475. Specific powers of council.** — The charter may confer on the regional council any of the following powers:

(1) To apply for, accept, receive, and disburse funds, grants, and services made available to it by the State of North Carolina or any agency thereof, the United States of America or any agency thereof, any unit of local government (whether or not a member of the council), and any private or civic agency;
(2) To employ personnel;
(3) To contract with consultants;
(4) To contract with the State of North Carolina, any other state, the United States of America, or any agency thereof, for services;
(5) To study regional governmental problems, including matters affecting health, safety, welfare, education, recreation, economic conditions, regional planning, and regional development;
(6) To promote cooperative arrangements and coordinated action among its member governments;
(7) To make recommendations for review and action to its member governments and other public agencies which perform functions within the region in which its member governments are located;
(8) Any other powers that are exercised or capable of exercise by its member governments and desirable for dealing with problems of mutual concern. (1971, c. 698, s. 1.)

§ **160A-476. Fiscal affairs.**—Each city and county having membership in a regional council may appropriate funds to the council, and levy annual taxes for the payment of the appropriations as a special purpose, in addition to any allowed by the Constitution. The levy of taxes and the expenditure of the proceeds thereof for the purposes of this Part are hereby declared to be a necessary expense and a special purpose, and the special approval of the General Assembly is hereby given for the levy and expenditures of taxes for those purposes. If a court of competent jurisdiction should declare that the levy and expenditure are not for a necessary expense, any city or county shall have authority to call and conduct a referendum on the question of the levy of taxes or the expenditure of tax funds for such purposes. Services of personnel, use of equipment and office space, and other services may be made available to the council by its member governments as a part of their financial support. (1971, c. 698, s. 1.)

§ **160A-477. Reports.**—Each regional council shall prepare and distribute to its member governments and to the public an annual report of its activities including a financial statement. (1971, c. 698, s. 1.)

§ **160A-478. Powers granted are supplementary.**—The powers granted to cities and counties by this Article are supplementary to any powers heretofore or hereafter granted by any other general law, local act, or city charter for the same or similar purposes. (1971, c. 698, s. 1.)

§§ **160A-479 to 160A-484:** Reserved for future codification purposes.

ARTICLE 21.

Miscellaneous.

§ **160A-485. Liability for negligent operation of motor vehicles.**—(a) A city is authorized and empowered, but not required, to waive its governmental immunity from liability for wrongful death or injury to person or property arising from the negligent operation of motor vehicles by its officers, agents, or employees when acting within the scope of their authority or within the course of their employment. Waiver of immunity shall be accomplished by purchasing liability insurance as provided in this section, and the immunity shall be waived only to the extent of the amount of insurance so obtained. No affirmative action of the council shall be required to retain immunity not waived by the purchase of insurance, and no affirmative action or resolution of the council beyond the act of purchasing liability insurance shall be required to accomplish waiver of immunity to extent of insurance coverage.

(b) Contracts of insurance purchased pursuant to this section must be issued by insurers duly licensed and authorized to execute insurance contracts in this State, and must by their terms adequately insure the city against any and all liability for wrongful death or injury to person or property proximately caused by the negligent operation of any motor vehicle by any officer, agent, or employee of the city when acting within the scope of his authority or within the course of his employment. Any company entering into a contract of insurance with a city pursuant to this section thereby waives any defense based on the governmental immunity of the city.

Cities are authorized to pay the lawful premiums of liability insurance policies out of the general tax revenues or other funds of the city.

(c) Any person sustaining damages, or in case of death, his personal representative, may sue a city that is insured as provided in this section, for the recovery of his damages in any court of competent jurisdiction in this State, and it shall be no defense to any such action that the operation of the motor vehicle was in pursuance of a governmental function of the city, to the extent that the city has insurance coverage as provided in this section.

Except as expressly provided herein, nothing in this section shall be construed to deprive any city of any defense whatsoever to any action for damages, or to restrict, limit, or otherwise affect any defense that the city may have at common law or by virtue of any statute (whether general, special, private, or local); and nothing in this section shall be construed to relieve any person sustaining damages, or any personal representative of any decedent, from any duty to give notice of his claim to the city or to begin his action within the time prescribed by the applicable statute of limitations.

(d) A city may incur liability pursuant to this section only with respect to a claim arising after the city has procured liability insurance pursuant to this section and during the time that the insurance is in effect.

(e) No part of the pleadings that relates to or alleges facts as to the city's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. No liability shall attach in any case unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury, and such issues shall be heard and determined by the judge without resort to a jury. The jury shall be absent during any motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance unless the city asks for a jury trial thereon.

No plaintiff in an action brought pursuant to this section, nor counsel, nor witness therefor, shall make any statement, ask any question, read any pleadings, or do any other act in the presence of the trial jury that indicates to any member of the jury that the city's liability would be covered by insurance. If any such act is done, the judge shall immediately order a mistrial of the action. (1951, c. 1015, ss. 1-5; 1971, c. 698, s. 1.)

Editor's Note.—The cases cited in the following note were decided under former §§ 160-191.1 to 160-191.5.

Common-Law Rule of Governmental Immunity.—Prior to the legislative enactment of these provisions, the common-law rule of governmental immunity prevailed in North Carolina. Under this common-law rule a municipality is not liable for the torts of its employees or agents committed while performing a governmental function. Galligan v. Town of Chapel Hill, 276 N.C. 172, 171 S.E.2d 427 (1970); Town of Hillsborough v. Smith, 10 N.C. App. 70, 178 S.E.2d 18 (1970).

Except where waived under authority of statute, the common-law rule of governmental immunity is still the law in North Carolina. Town of Hillsborough v. Smith, 10 N.C. App. 70, 178 S.E.2d 18 (1970).

In the absence of statutory authority a municipality has no power to waive its governmental immunity. Galligan v. Town of Chapel Hill, 276 N.C. 172, 171 S.E.2d 427 (1970).

A municipal corporation may not waive or contract away its governmental immunity in the absence of legislative authority for such action. Town of Hillsborough v. Smith, 10 N.C. App. 70, 178 S.E.2d 18 (1970).

Immunity Not Waived without Purchase of Insurance.—In the operation of a chemical fogging machine on a street or highway for the purpose of destroying insects, a municipality acts in a governmental capacity in the interest of the public health, and it may not be held liable in tort for injuries resulting therefrom unless it waives its immunity by procuring liability insurance, even though the operation of the machine renders a street or highway hazardous to traffic, since the exception to governmental immunity in failing to keep its streets in a reasonably safe condition relates solely to the maintenance and repair of its streets. Clark v. Scheld, 253 N.C. 732, 117 S.E.2d 838 (1961).

Where a municipal corporation procured liability insurance on a vehicle used in the operation of a chemical fogging machine, it waived its governmental immunity for the negligent operation of the vehicle to the extent of the amount of the liability insurance. White v. Mote, 270 N.C. 544, 155 S.E.2d 75 (1967).

Purchase of Liability Insurance Constitutes Waiver of Immunity in Absence of Affirmative Action.—In the absence of some affirmative action by a municipality, the purchase of liability insurance will constitute a waiver of its governmental immunity to the extent of the insurance policy so obtained. Galligan v. Town of Chapel Hill, 276 N.C. 172, 171 S.E.2d 427 (1970).

New Resolution against Waiver of Immunity Not Required Each Time Liability Insurance Acquired or Renewed.—To require a town to adopt a new resolution against waiver of immunity each time it renews a liability insurance policy or acquires a new liability policy would place an unnecessary and useless burden upon the town and impose a condition not provided for in former § 160-191.1 or contemplated by the General Assembly. Galligan v. Town of Chapel Hill, 276 N.C. 172, 171 S.E.2d 427 (1970).

Municipal Corporation Cannot Avoid Liability under This Section.—If a municipal corporation, having secured liability insurance, injured plaintiff by actionable negligence in the operation of its truck and fogging machine in exercising its legal right to destroy mosquitoes, it could not completely avoid liability to him by reason of the provisions of former §§ 160-191.1 to 160-191.5. Moore v. Plymouth, 249 N.C. 423, 106 S.E.2d 695 (1959).

Operation of Public Library.—Former § 160-191.1 did not authorize or empower a municipality to waive its governmental immunity for injuries to a person proximately caused by its operation of a public library. Seibold v. City of Kinston, 268 N.C. 615, 151 S.E.2d 654 (1966).

§ 160A-486. Estimates of population.—When a city is not included in the most recent federal census of population, it shall be entitled to participate in all State-collected funds allocated to local governments wholly or partially on the basis of population by filing an estimate of the population of the city with the department or agency charged with the responsibility of distributing the funds. The estimate shall be approved by the city council and by the board of commissioners of the county or counties in which the city is located. When so approved, the estimate of population shall be deemed the official census of the city until the results of the next federal census of population are officially announced. All departments and agencies of the State charged with the responsibility of distributing funds to local governments are authorized and directed to accept estimates of population made pursuant to this section in distributing and allocating the funds. (1953, c. 79; 1969, c. 873; 1971, c. 698, s. 1.)

§ 160A-487. City and county financial support for rescue squads.—Each city and county is authorized to appropriate funds to rescue squads or teams to enable them to purchase and maintain rescue equipment and to finance the operation of the rescue squad either within or outside the boundaries of the city or county. (1959, c. 989; 1971, c. 698, s. 1.)

§ 160A-488. Art galleries and museums.—(a) Any city or county is authorized to establish and support a public art gallery, museum, or art center, or it may support or assist in supporting any art gallery, museum, or art center located within its boundaries and owned or operated by a nonprofit corporation so long as the facility is open to the public. As used in this section, "support" includes but is not limited to: acquisition, construction, and renovation of buildings, including acquisition of land and other property therefor; purchase of paintings and other works of art; purchase of materials and equipment; compensation of personnel; and all operating and maintenance expenses of the facility.

(b) Unless voter approval for the use of tax funds is secured, a city or county may appropriate only nontax revenues pursuant to this section. A city or county is authorized to submit to the voters the question of whether a special tax shall be levied for the support of art galleries, museums, and art centers. The proposition may be submitted at a special election called for that purpose, or at any other special, regular municipal, or general election. The maximum tax levy to be submitted to the voters shall be determined by the city or county governing board, not in excess of ten cents (10¢) on the one hundred dollars ($100.00) value of property. If a majority of the voters participating in the election favor the levy of the tax, the governing board may levy so much of the authorized tax as it deems advisable. (1955, c. 1338; 1961, c. 309; 1965, c. 1019; 1971, c. 698, s. 1.)

§ 160A-489. Auditoriums, coliseums, and convention centers.—Any city is authorized to establish and support public auditoriums, coliseums, and convention centers. As used in this section, "support" includes but is not limited to: acquisition, construction, and renovation of buildings and acquisition of the necessary land and other property therefor; purchase of equipment; compensation of personnel; and all operating and maintenance expenses of the facility. Unless voter approval for the use of property tax funds is secured, a city may appropriate only nontax revenues or sales tax revenues pursuant to this section. A city is authorized to submit to its voters the question of whether property taxes may be levied and (or) bonds issued for public auditoriums, coliseums, or convention centers. (1971, c. 698, s. 1.)

§ **160A-490. Photographic reproduction of records.**—All cities shall be subject to the provisions of Article 2A of Chapter 153 of the General Statutes (G.S. 153-15.1 through 153-15.6). When a county officer is designated by title in that Article, the designation shall be construed to mean the appropriate city officer, and the city council shall perform powers and duties conferred and imposed on the board of county commissioners. (1955, c. 451; 1971, c. 698, s. 1.)

§ **160A-491. Powers in connection with beach erosion.**—[All cities shall have the power] to levy taxes and appropriate tax or nontax funds for the acquisition, construction, reconstruction, extension, maintenance, improvement, or enlargement of groins, jetties, dikes, moles, walls, sand dunes, vegetation, or other types of works or improvements which are designed for the control of beach erosion or for protection from hurricane floods and for the preservation or restoration of facilities or natural features which afford protection to the beaches or other land areas of the municipalities or to the life and property thereon. (1971, c. 896, s. 5; c. 1159, s. 2.)

Editor's Note. — This section was originally codified as subdivision (48) of § 160-200. It was transferred to its present position by Session Laws 1971, c. 896, s. 5, effective Jan. 1, 1972.

§ **160A-492. Human relations programs.**—The governing body of any city, town, or county is hereby authorized to undertake, and to expend tax or nontax funds for, human relations programs. In undertaking and engaging in such programs, the governing body may enter into contracts with and accept loans and grants from the State or federal governments. The governing body may appoint such human relations committees or boards and citizens committees, as it may deem necessary in carrying out such programs and activities, and may authorize the employment of personnel by such committees or boards, and may establish their duties, responsibilities, and powers. The cities and counties may jointly undertake any program or activity which they are authorized to undertake by this section. The expenses of undertaking and engaging in the human relations programs and activities authorized by this section are declared to be necessary expenses for which funds derived from taxation may be expended without the necessity of prior approval of the voters.

For the purposes of this section, a "human relations program" shall be defined as one devoted to the study of problems in the area of human relations, or to the promotion of equality of opportunity for all citizens, or to the promotion of understanding, respect and goodwill among all citizens, or to the provision of channels of communication among the races, or to encourage the employment of qualified people without regard to race, or to encourage youth to become better trained and qualified for employment. (1971, c. 896, s. 11; c. 1207, ss. 1, 2.)

Editor's Note. — This section was originally codified as subdivision (51) of § 160-200. It was transferred to its present position by Session Laws 1971, c. 896, s. 11, effective Jan. 1, 1972.

Chapter 161.

Register of Deeds.

Article 1.

The Office.

Sec.
161-6. Appointment of assistant and deputy registers of deeds; authority to sign in name of register of deeds; holdover assistants and deputies.
161-10. Uniform fees of registers of deeds.
161-10.1. Exemption of armed forces discharge documents and certain other records needed in support of claims for veterans' benefits.
161-10.2. [Repealed.]
161-11. Per diem as clerk to the board of county commissioners.

Article 2.

The Duties.

Sec.
161-14.2. Indexing procedures for instruments and documents filed in the office of the register of deeds.
161-22.1. Index and cross-index of immediate prior owners of land.
161-28. Validation of acts of assistant and deputy registers of deeds performed pending filling of vacancy in office of register of deeds.

ARTICLE 1.

The Office.

§ 161-2. Four-year term for registers of deeds; counties excepted.

Provision for Free Birth Certificates for Child Entering School Takes Precedence over Fee Schedule.—See opinion of Attorney General to Mr. John I. Morgan, Register of Deeds, Washington, N.C., 4/17/70.

§ 161-4. Bond required.—(a) Every register of deeds shall give bond with sufficient surety, to be approved by the board of county commissioners, in a sum of not less than ten thousand dollars ($10,000.00) nor more than fifty thousand dollars ($50,000.00), payable to the State, and conditioned for the safekeeping of the books and records, and for the faithful discharge of the duties of his office.

(b) The bond and surety required under subsection (a) shall further be conditioned for the safekeeping of the books and records, and for the faithful discharge of the duties of office of the register of deeds by any incumbent assistant and deputy register of deeds appointed prior to the vacancy pursuant to G.S. 161-6 and holding over after vacancy in the office of register of deeds for the interim, as provided in G.S. 161-5 (b). (1868, c. 35, s. 3; 1876-7, c. 276, s. 5; Code, s. 3648; 1899, c. 54, s. 52; Rev., s. 301; C. S., s. 3545; 1963, c. 204; 1965, c. 900; 1969, c. 636.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, designated the former provisions of the section as subsection (a) and added subsection (b).

The 1969 amendment, effective Dec. 1, 1969, substituted "not less than ten thousand dollars ($10,000.00) nor more than fifty thousand dollars ($50,000.00)" for "not exceeding ten thousand dollars" in subsection (a).

§ 161-5. Vacancy in office.—(a) When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law.

(b) In the interim between such vacancy in the office of register of deeds and the appointment and qualification of a successor register of deeds, under the provisions of subsection (a), any incumbent assistant or deputy register of deeds appointed under G.S. 161-6 prior to the vacancy shall continue to hold office as assistant or deputy registers of deeds until discharged or otherwise lawfully relieved of office by the lawful successor to the office of register of deeds. (1868, c. 35, s. 4; Code, s 3649; Rev., s. 2651; C. S., s. 3546; 1965, c. 900.)

Cross Reference.—
As to validation of acts of assistant and deputy registers of deeds performed pending filling of vacancy in office of register of deeds, see § 161-28.

Editor's Note. — The 1965 amendment effective July 1, 1965, designated the former provisions of the section as subsection (a) and added subsection (b).

§ 161-6. Appointment of assistant and deputy registers of deeds; authority to sign in name of register of deeds; holdover assistants and deputies.—(a) The registers of deeds of the several counties are hereby authorized to appoint one or more assistant registers of deeds and one or more deputy registers of deeds, whose acts as assistants or deputies shall be valid and for which the registers of deeds shall be officially responsible. The certificate of appointment of an assistant or deputy shall be filed by the appointing register of deeds in the office of the clerk of the superior court, who shall record the same.

(b) Each assistant and deputy register of deeds so appointed shall be authorized, in addition to his other powers and duties, to register and sign instruments and documents in the name and under the title of the appointing register of deeds, by himself as assistant or deputy, as appropriate. Such signing shall be substantially as follows:

John Doe, Register of Deeds
by Richard Roe, Assistant (or Deputy, as appropriate).

(c) Such registering and signing, when regular and sufficient in all other respects, shall be valid for all purposes, and of the same force and effect as if the instrument or document had been registered and signed by the register of deeds personally.

(d) Wherever in the General Statutes reference is made to "the register of deeds and (or) his assistant" or "the register of deeds and (or) his deputy" or words substantially to this effect, or reference is made only to "the assistant register of deeds" or "the deputy register of deeds," such reference to either assistant or deputy, unless the contrary intent is specifically stated in the text, shall also include the other, insofar as such reference pertains to the authority, powers, duties, rights, privileges, or qualifications for office of assistant or deputy register of deeds.

(e) Incumbent assistant and deputy registers of deeds holding over after a vacancy in the office of register of deeds, pursuant to the provisions of G.S. 161-5 (b), shall continue to have and exercise all lawful power and authority of office until lawfully relieved of office, including, but not restricted to, all power and authority set forth in subsections (a), (b), (c) and (d), and in chapter 161 generally, and their acts as assistant or deputy registers of deeds shall be official and valid, and the appointing register of deeds, or his estate, and the official bond under G.S. 161-4 shall be responsible for their acts as assistant or deputy registers of deeds, and such assistant or deputy register of deeds shall also be individually, personally and officially responsible for his own acts. (1909, c. 628, s. 1; C. S., s. 3547; 1949, c. 261; 1959, c. 279; 1963, c. 191; 1965, c. 900.)

Cross Reference. — As to validation of acts of assistant and deputy registers of deeds performed pending filling of vacancy in office of register of deeds, see § 161-28.

Editor's Note.—
The 1965 amendment, effective July 1, 1965, designated the former four paragraphs as subsections (a), (b), (c) and (d) and added subsection (e).

§ 161-9. Official seal.—The office of register of deeds for every county shall have and use an official seal or stamp, which shall be provided by the county commissioners. The official seal or stamp shall be round, and the size shall not exceed 1⅝ inches in diameter. Contained thereon shall be the name of the register of deeds, the county and letters "N.C.," and the words "Register of Deeds." The ink used for the official stamp shall be of the reproducible type; provided, hat any register of deeds using a nonconforming seal or stamp prior to July 1, 969 may continue to use such seal or stamp. (1893, c. 119, s. 1; Rev., s. 2649; . S., s. 3550; 1969, c. 1028.)

Editor's Note. — The 1969 amendment, ffective July 1, 1969, rewrote this section.

§ **161-10. Uniform fees of registers of deeds.**—(a) In the performance of his duties, the register of deeds shall collect the following fees which hall be uniform throughout the State:

(1) Instruments in General.—For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be two dollars ($2.00) for the first page, which page shall not exceed eight and one-half inches by fourteen inches, plus one dollar ($1.00) for each additional page or fraction thereof. A page exceeding eight and one-half inches by fourteen inches shall be considered two pages.

(2) Marriage Licenses.—For issuing a license—five dollars ($5.00); for issuing a delayed certificate with one certified copy—five dollars ($5.00); and for a proceeding for correction of names in application, license or certificate, with one certified copy—five dollars ($5.00).

(3) Plats.—For each original or revised plat recorded—five dollars ($5.00); for furnishing a certified copy of a plat—two dollars ($2.00).

(4) Right-of-Way Plans.—For each original or amended plan and profile sheet recorded—five dollars ($5.00). This fee is to be collected from the State Highway Commission.

(5) Registration of Birth Certificate Four Years or More after Birth.—For preparation of necessary papers when birth to be registered in another county—$2.50; for registration when necessary papers prepared in another county, with one certified copy—$2.50; for preparation of necessary papers and registration in the same county, with one certified copy—five dollars ($5.00).

(6) Amendment of Birth or Death Record.—For preparation of amendment and effecting correction—one dollar ($1.00).

(7) Certified Copies.—For furnishing a certified copy of any instrument for which no other provision is made by this section—one dollar ($1.00) per page or fraction thereof.

(8) Comparing Copy for Certification.—For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof—one dollar ($1.00).

(9) Uncertified Copies.—When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be prominently posted in his office.

(10) Acknowledgment.—For taking an acknowledgment, oath, or affirmation or for the performance of any notarial act—fifty cents ($.50). This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

(11) Liens for Internal Revenue.—For recording a federal tax lien—two

dollars ($2.00); for filing a certificate of discharge—two dollars ($2.00). These fees are to be collected from the United States.

(12) Uniform Commercial Code.—Such fees as are provided for in chapter 25, article 9, part 4, of the General Statutes.

(13) Torrens Registration.—Such fees as are provided in G.S. 43-5.

(14) Master Forms.—Such fees as are provided in G.S. 47-21.

(15) Probate.—For certification of instruments for registration as provided in G.S. 47-14—fifty cents ($.50).

(16) Qualification of Notary Public.—For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10-2—one dollar ($1.00).

(b) The uniform fees set forth in this section are complete and exclusive and no other fees shall be charged by the register of deeds.

(c) These fees shall be collected in every case prior to filing, registration, recordation, certification or other service rendered by the register of deeds unless by law it is provided that the service shall be rendered without charge. (Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; c. 247, s. 3; cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; Rev., s. 2776; 1911, c. 55, s. 3; C. S., s. 3906; 1967, c. 639, s. 4; c. 823, s. 33; 1969, c. 80, s. 1; c. 912, s. 3.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The first 1969 amendment, effective July 1, 1969, rewrote this section as previously amended in 1967.

The second 1969 amendment, effective Sept. 1, 1969, added subdivision (16) of subsection (a).

Section 14 of c. 80, Session Laws 1969, provides that nothing in the act "shall prevent any register of deeds whose compensation is derived from fees from retaining those fees as heretofore provided by law except that the amount of such fees shall be determined as provided herein."

Opinions of Attorney General. — Miss Frances H. Burwell, Stokes County Register of Deeds, 7/8/69.

§ 161-10.1. Exemption of armed forces discharge documents and certain other records needed in support of claims for veterans' benefits.—Any schedule of fees which is now or may be prescribed in Chapter 161 of the General Statutes or in G.S. 161-10 shall not apply to nor shall the same repeal any of the provisions of Article 5 of Chapter 47 of the General Statutes. Any schedule of fees which is now or may be hereafter prescribed in Chapter 161 of the General Statutes or as may appear in G.S. 161-10 shall not apply to nor shall the same repeal any of the provisions of G.S. 165-11. (1971, c. 679.)

Editor's Note.—Former § 161-10.1, containing local variations as to fees of registers of deeds, was repealed by Session Laws 1969, c. 80, s. 6, effective July 1, 1969.

§ 161-10.2: Repealed by Session Laws 1969, c. 80, s. 6, effective July 1, 1969.

Editor's Note.—Former § 161-10.2 was derived from Session Laws 1967, c. 228, s. 3.

§ 161-11. Per diem as clerk to the board of county commissioners.—The register of deeds shall be allowed, while and when acting as clerk to the board of county commissioners, such per diem as the board may allow. (1933, c. 437; 1969, c. 80, s. 2.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, rewrote this section.

ARTICLE 2.

The Duties.

§ 161-12. Apply to clerk for instruments for registration.

Local Modification. — Bladen: 1967, c. 07.

§ 161-13. Failure of clerk to deliver papers.

Local Modification. — Bladen: 1967, c. 07.

§ 161-14. Registration of instruments.—(a) The register of deeds shall mmediately register all written instruments presented to him for registration. When an instrument is presented for registration, the register of deeds shall indorse upon it the day and hour on which it was presented. This indorsement forms a part of the registration of the instrument. All instruments shall be registered n the precise order in which they were presented for registration. Immediately after indorsing the day and hour of presentation upon an instrument, the register of deeds shall index and cross-index it in its proper sequence. He shall then proceed to register it on the day that it is presented unless a temporary index has been established.

The register of deeds may, in his discretion, establish a temporary index in which all instruments presented for registration shall be indexed until they are registered and entered in the permanent indexes. A temporary index shall operate n all respects as the permanent index. All instruments presented for registration shall be registered and indexed and cross-indexed on the permanent indexes not ater than 30 days after the date of presentation.

(b) All instruments presented for registration shall be on paper and in ink of a color, quality, size, and condition that will permit the production of legible and permanent reproductions thereof by photographic or microphotographic processes. If an instrument presented for registration is in a condition that will not permit such reproduction, the register of deeds shall indorse thereon the following notation: "Record of poor quality due to condition of original document." He shall then register the instrument in the usual manner. (R.C., c. 37, s. 23; 1868, c. 35, s. 9; Code, s. 3654; Rev., s. 2658; C. S., s. 3553; 1921, c. 114; 1971, c. 657.)

Editor's Note.—The 1971 amendment rewrote the former provisions of this section as subsection (a) and added subsection (b).

§ 161-14.2. Indexing procedures for instruments and documents filed in the office of the register of deeds.—The following procedure shall be used in making index entries:

(1) When each word of the signature is legible and it gives the complete name of the party, the signature shall govern.

(2) When the signature is legible but initials or abbreviations are used, any additional information given by the printed or typed name and not in conflict with the signature shall govern.

(3) When none of the words in the signature are legible, the printed or typed name shall govern.

(4) When one or more of the words in the signature are legible, then the words that are legible shall govern; the words that appear in the printed or typed name shall govern over the words of the signature that are not legible.

(5) When the spelling of any word in a legible signature and the spelling of the corresponding word in the typed or printed name is at variance, and the variance would cause the entries to be made at different places in the index, then the instrument shall be indexed under both spellings.

(6) When a reasonable interpretation of an illegible word in a signature is

at variance with the corresponding word in a typed or printed name, and the variance would cause the entries to be made at different places in the index, then the instrument shall be indexed in both places. (1969, c. 694, s. 1.)

Editor's Note.—Session Laws 1969, c. 694, s. 3, makes the act effective July 1, 1969.

§ **161-22. Index and cross index of registered instruments.**—The register of deeds shall provide and keep in his office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds and other instruments of writing required or authorized to be registered; such indexes to be kept in well-bound books, and shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors or obligees, and shall be indexed and cross-indexed, within twenty-four hours after registering any instrument, so as to show the name of each party under the appropriate letter of the alphabet; and wherever the "Family" index system shall be in use, to also show the name of each party under the appropriate family name and the initials of said party under the appropriate alphabetical arrangement of said index; and all instruments shall be indexed according to the particular system in use in the respective office in which the instrument is filed for record. Reference shall be made, opposite each name to the page, title or number of the book in which is registered any instrument: Provided, that where the "Family" system hereinbefore referred to has not been installed, but there has been installed an indexing system having subdivisions of the several letters of the alphabet, a registered instrument shall be deemed to be properly indexed only when the same shall have been indexed under the correct subdivision of the appropriate letter of the alphabet: Provided, further, that no instrument shall be deemed to be properly registered until the same has been properly indexed as herein provided: Provided, further, that in all counties where a separate index system is kept for chattel mortgages or other instruments concerning personal property, no instrument affecting the title to real estate shall be deemed to be properly registered until the same has been properly registered and indexed in the books and index system kept for real estate conveyances. A violation of this section shall constitute a misdemeanor.

Notwithstanding any provision to the contrary in this section or elsewhere in the General Statutes of North Carolina, the register of deeds may index deeds of trust in the name of the grantor and the trustee only. (1876-7, c. 93, s. 1; Code, s. 3664; 1899, c. 501; Rev., ss. 2665, 3600; C. S., s. 3561; 1929, c. 327, s. 2; 1967, cc. 443, 1262.)

Local Modification.—Alamance: 1963, c. 739; 1965, cc. 17, 150; Buncombe: 1971, c. 1069; Duplin: 1963, c. 739; 1965, cc. 17, 150; Forsyth: 1963, c. 739; 1965, cc. 17, 150; 1971, c. 1069; Guilford: 1963, c. 739; 1965, cc. 17, 150; Orange: 1971, c. 1069; Wake and Wayne: 1963, c. 739; 1965, cc. 17, 150.

Editor's Note.—

The first 1967 amendment added the second paragraph.

The second 1967 amendment, effective at midnight June 30, 1967, eliminated the former last proviso in the second sentence, which required the double indexing of instruments containing both real and personal property.

§ **161-22.1. Index and cross-index of immediate prior owners of land.**—Whenever any deed or other instrument conveying real property by a trustee, mortgagee, commissioner, or other officer appointed by the court, or by the sheriff under execution, is filed with the register of deeds for the purpose of being recorded, it shall be the duty of the register of deeds to index and cross-index as grantors the names of all persons recited in said instrument to be the persons whose interest in such real estate is being conveyed or from whom the itle of such real estate was acquired by the grantor in such instrument. (1947, c. 211, ss. 1, 2; 1969, c. 80, s. 5.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, deleted the former second paragraph, providing for a fee.

§ **161-25. Keep list of statutes authorizing special tax.**—The register of deeds in each county, or the auditor in those counties having county auditors, must keep on file and subject to inspection by the public a list of the statutes authorizing a special tax levy in their respective counties, showing the year in which such special tax levy was authorized by the General Assembly of North Carolina and the chapter of the public laws containing the authority for such special levy. (1917, c. 182; C. S., s. 3565; 1969, c. 80, s. 7.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, deleted the former last sentence, providing a fee for a certified copy.

§ **161-28. Validation of acts of assistant and deputy registers of deeds performed pending filling of vacancy in office of register of deeds.**—Any and all acts and duties performed by any and all assistant or deputy registers of deeds appointed and acting under the provisions of G.S. 161-6 or any other provisions of law, general, local, or special, after a vacancy may have occurred from any cause in the office of register of deeds, including, but not restricted to, a vacancy occurring as a result of the death in office of any incumbent register of deeds, and before the board of county commissioners shall have filled such vacancy by the appointment of a successor and his qualification for office as required by law, under and pursuant to the provisions of G.S. 161-5 and any other applicable provisions of law, shall be and the same are hereby validated, ratified and confirmed to all intents and purposes as if performed by an incumbent in the office of register of deeds and to all intents and purposes as if performed under and pursuant to specific provisions of law authorizing and empowering the register of deeds, or any assistant or deputy registers of deeds, to perform all such acts and duties. The provisions of this validating act shall include, but not be restricted to, all acts and duties of the office of register of deeds, or of the office of assistant or deputy register of deeds, as enumerated and set forth under the specific provisions of this chapter, or under the provisions of any other general laws as set forth in the General Statutes of North Carolina, or in any other provisions of law, private, local or special. (1965, c. 835, s. 1.)

Editor's Note. — Section 3, c. 835, Session Laws 1965, provides: "This act shall be in full force and effect from and after its ratification, and shall validate all acts and duties performed prior to the effective date of this act". (June 8, 1965).

Chapter 162.

Sheriff.

ARTICLE 1.

The Office.

§ 162-2. Disqualifications for the office.—No person shall be eligible to the office of sheriff who is not of the age of 18 years, and has not resided in the county in which he is chosen for one year immediately preceding his election, or who is a member of the General Assembly, or practicing attorney, or who theretofore has been sheriff of such county and has failed to settle with and fully pay up to every officer the taxes which were due from him. (1777, c. 118, ss. 2, 4, P. R.; 1806, c. 699, s. 2, P. R.; 1829, c. 5, s. 6; 1830, c. 25, ss. 2, 3; R. C., c. 105, ss. 5, 6, 7; Code, ss. 2067, 2068, 2069; Rev., s. 2809; C. S., s. 3926; 1971, c. 1231, s. 1.)

Editor's Note. — The 1971 amendment substituted "18" for "twenty-one."

§ 162-5. Vacancy filled; duties performed by coroner.

Local Modification.—Jackson, Swain and Transylvania: 1969, c. 405.

ARTICLE 3.

Duties of Sheriff.

§ 162-14. Execute process; penalty for false return.

II. NEGLECT OR FAILURE TO MAKE DUE RETURN.

A. In General.

This section imposes no undue hardship upon sheriffs. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

The highest considerations of public policy require that sheriffs shall not be negligent in the service of process committed to them. Ignorance of the officer is no excuse. Whether any damage was done to the plaintiff is immaterial. The amercement is for failure to discharge an official duty. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

The public policy which prompted the enactment of this section is no less valid today—and the need for such a statute is no less real. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

An amercement is a penalty, etc. —

In accord with original. See Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

The one hundred dollars is given to the plaintiff in the execution upon the theory that he is aggrieved, but chiefly as a punishment to the officer, and to stimulate him to active obedience. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

The courts have no "dispensing power" to relieve a sheriff from the penalty imposed by this section. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

It is no excuse that the sheriff has no corrupt or bad intentions and that the plaintiff is saved from any resulting injury by the voluntary appearance of the defendant. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

An agreement to suspend the collection of the debt, or to stay the execution, as it is commonly called, even if communicated to the sheriff, gives no authority to the officers not to return the writ. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

B. What Constitutes Failure and Defenses.

2. When Return Is Sufficient.

The term "return" implies that the process is taken back, with such endorsements as the law requires, to the place from which it originated. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

C. Actions Concerning Amercements.

Party Aggrieved Is Entitled to Judgment Nisi as of Course. — Upon motion and proof that a sheriff has failed to return process delivered to him, as directed in the process and required by law, the party aggrieved is entitled, as of course, to judgment nisi against him. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

And Penalty Is Imposed Unless Sheriff Shows Cause at Next Succeeding Term to Vacate Amercement.—The penalty is imposed upon the delinquency of the sheriff for failing to make due return of the execution unless, at the next succeeding term after judgment nisi is entered against him he shows to the court sufficient cause to vacate the tentative amercement. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

Question for Jury. — If the issue is in dispute, whether the return was made in proper time is a question of fact to be decided by the jury. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

III. FALSE RETURN.

Penalty Enforced in Civil Action.—

The correct procedure under this statute to recover the penalty from a sheriff for making a false return is by civil action. Crowder v. Jenkins, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

Power of Court to Allow, etc.—

It is established law in North Carolina that the court has the discretionary power, in proper cases, to allow a sheriff to amend his return of process to speak the truth, even though the amendment will defeat the penalty for a false return. Crowder v. Jenkins, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

It was not proper for the trial judge to permit the defendants to amend the return during the course of the trial, where the plaintiff alleged and the defendants admitted that the return had been marked "served by delivering a copy thereof to this plaintiff," where the plaintiff alleged and the defendants admitted that the sheriff "did not serve the original order of court upon the plaintiff," and where the parties stipulated at a pre-trial conference that the return showing "that it was delivered to the plaintiff was not correct." Crowder v. Jenkins, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

The admissions and stipulations relating to the return are binding on the defendants and prevent them from introducing evidence to dispute it. The admissions in the pleadings (that the sheriff did not serve the original order upon the plaintiff and that the return had been marked served by the delivery of a copy thereof to the plaintiff) and the stipulation (that the return showed that it was delivered to the plaintiff) were not attacked and were not amended, so under the circumstances this was not a "proper case" in which to allow an amendment to the return of the sheriff, and the trial judge committed error in allowing the amendment over the objection of the plaintiff. Crowder v. Jenkins, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

A return untrue in fact is a false return within the intent and meaning of the statute. Crowder v. Jenkins, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

Mistake.—

The stringent rule has been adopted in this State, that every return untrue in fact is a false return within the statute upon the subject of false returns, although the officer may be mistaken in the matter or insert the fact in his return by inadvertence. It is immaterial that the officer had no selfish purpose to subserve, or was unmoved by any criminal intent. If in returning to the court his action under an execution, his return is false in its facts or any of the facts touching the things done under it, he is as well exposed to the penalty of $500 denounced against a false return, as if the false facts were willfully and corruptly inserted. Crowder v. Jenkins, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

When the falsity of the return was alleged and not controverted, the issue of the truth or falsity of the return is removed from the case. Crowder v. Jenkins, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

§ 162-15. Sufficient notice in case of amercement.

Cross Reference.—See note to § 162-14.

§ 162-16. Execute summons, order or judgment.—Whenever the sheriff may be required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the sheriff be a party, the coroner shall be bound to perform the service, as he is now bound to execute process where the sheriff is a party; and this Chapter relating to sheriffs shall apply to coroners when the sheriff is a party. Sheriffs and coroners may return process by mail. Their liabilities in respect to the execution of process shall be as prescribed by law.

In those counties where the office of coroner has been abolished, or is vacant, and in which process is required to be served or executed on the sheriff, the authority to serve or execute such process shall be vested in the clerk of court; however, the clerk of court is hereby empowered to designate and direct by appropriate order some person to act in his stead to serve or execute the same. (C. C. P., s. 354; Code, s. 598; Rev., s. 2819; C. S., s. 3938; 1971, c. 653, s. 1.)

Editor's Note.—The 1971 amendment, effective Oct. 1, 1971, added the second paragraph.

§ 162-22. Custody of jail.—The sheriff shall have the care and custody of the jail in his county; and shall be, or appoint, the keeper thereof; provided that the board of county commissioners of any county by and with the consent of the sheriff shall have the authority to appoint a person other than the sheriff to serve as jailer; the person appointed by a board of county commissioners as jailer shall have the care and custody of the county jail.

No law-enforcement officer or jailer who shall have the care and custody of any jail shall receive any portion of any jail fee or charge paid by or for any person confined in such jail, nor shall the compensation or remuneration of such officer be affected to any extent by the costs of goods or services furnished to any person confined in such jail. (R. C., c. 105, s. 22; Code, s. 2085; Rev., s. 2824; C. S., s. 3944; 1967, c. 581, s. 3; 1969, c. 1090.)

Editor's Note.—The 1967 amendment, effective July 1, 1967, added the provisions relating to appointment of a person other than the sheriff to serve as jailer.

The 1969 amendment, effective Jan. 1, 1970, added the second paragraph.

Cited in Wilkie v. Henderson County, 1 N.C. App. 155, 160 S.E.2d 505 (1968).

Chapter 162A.

Water and Sewer Systems.

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Water and Sewer Authorities.

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162A-47. Form and execution of bonds; terms and conditions; use of proceeds; interim receipts or temporary bonds; replacement of lost, etc., bonds; consent for issuance.
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Sec.
162A-56. Advances by political subdivisions for preliminary expenses of districts.
162A-57. Article regarded as supplemental.
162A-58. Inconsistent laws declared inapplicable.

Editor's Note. — Session Laws 1971, c. 892, s. 1, changed the title of this Chapter from "Water and Sewer Authorities" to "Water and Sewer Systems," designated §§ 162A-1 to 162A-19 as present Article 1, added a new Article 2, and substituted "Article" for "chapter" throughout the text of this Chapter.

ARTICLE 1.

Water and Sewer Authorities.

§ **162A-1. Title.**—This Article shall be known and may be cited as the "North Carolina Water and Sewer Authorities Act." (1955, c. 1195, s. 1; 1971, c. 892, s. 1.)

Editor's Note.—The 1971 amendment substituted "Article" for "chapter."

§ **162A-2. Definitions.**—As used in this Article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word "authority" shall mean an authority created under the provisions of this Article or, if such authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this Article to the authority shall be given by law.

(2) The word "Board" shall mean the Board of Water Commissioners of the State of North Carolina or the Board, Body or Commission succeeding to the principal functions thereof or to whom the powers given by this Article to the Board shall be given by law.

(3) The word "cost" as applied to a water system or a sewer system shall include the purchase price of any such system, the cost of construction, the cost of all labor and materials, machinery and equipment, the cost of improvements, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and, if deemed advisable by the authority, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction, administrative expense and such other expenses, including reasonable provision for working capital, as may be necessary or incident to the financing herein authorized. Any obligation or expense incurred by the authority or by any political subdivision prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items or cost may be regarded as a part of such cost.

(4) The term "governing body" shall mean the board, commission, council or other body, by whatever name it may be known, in which the general legislative powers of the political subdivision are vested.

(5) The word "improvements" shall mean such repairs, replacements, additions, extensions and betterments of and to a water system or a sewer system as are deemed necessary by the authority to place or to maintain such system in proper condition for its safe, efficient and economic

operation or to meet requirements for service in areas which may be served by the authority and for which no existing service is being rendered.

(6) The word "person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

(7) The term "political subdivision" shall mean any county, city, town, incorporated village, sanitary district or other political subdivision or public corporation of this State now or hereafter incorporated.

(7a) The word "revenues" shall mean all moneys received by an authority from or in connection with any sewer system or water system including, without limitation, any moneys received as interest grants.

(8) The word "sewage" shall mean the water-carried wastes created in and carried or to be carried away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public building together with such surface or ground water or household and industrial wastes as may be present.

(9) The term "sewage disposal system" shall mean and shall include any plant, system, facility or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage (including industrial wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resources), or any integral part thereof, including but not limited to treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof.

(10) The word "sewers" shall include mains, pipes and laterals for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system, including pumping stations where deemed necessary by the authority.

(11) The term "sewer system" shall embrace both sewers and sewage disposal systems and all property, rights, easements and franchises relating thereto.

(12) The term "water system" shall mean and include all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, and any integral part thereof, including but not limited to water supply systems, water distribution systems, sources of water supply including lakes, reservoirs and wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof. (1955, c. 1195, s. 2; 1969, c. 850; 1971, c. 892, s. 1.)

Editor's Note.—The 1969 amendment added subdivision (7a).

The 1971 amendment substituted "Article" for "chapter" throughout this section.

§ **162A-3. Procedure for creation; certificate of incorporation; certification of principal office and officers.**—(a) The governing bodies of any two or more political subdivisions may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than ten days prior to the date fixed for such hearing, in a newspaper having a general circulation in the political subdivision. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing to be held thereof. No such political subdivision shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) The name of the authority;
(2) A statement that such authority is organized under this Article;
(3) The names of the organizing political subdivisions; and
(4) The names and addresses of the first members of the authority appointed by the organizing political subdivisions.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this Article shall be filed with the Secretary of State of North Carolina, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the authority a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this Article.

(d) When the authority has been duly organized and its officers elected as herein provided the secretary of the authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the authority. (1955, c. 1195, s. 3; 1971, c. 892, s. 1.)

Editor's Note. — The 1971 amendment substituted "Article" for "chapter" throughout this section.

§ 162A-4. Withdrawal from authority; joinder of new subdivision. —(a) Whenever an authority has been organized under the provisions of this Chapter, any political subdivision may withdraw therefrom at any time prior to the creation of any obligations by the authority, and any political subdivision not having joined in the original organization may, with the consent of the authority, join the authority; provided, that any political subdivision not having joined the original organization shall have the right upon reasonable terms and conditions, whether the authority shall consent thereto or not, to join the authority if the authority's water system or sewer system, or any part thereof is situated within the boundaries of the political subdivision or of the county within which the political subdivision is located.

(b) Any political subdivision desiring to withdraw from or to join an existing authority shall signify its desire by resolution adopted after a public hearing thereon, notice of which hearing shall be given in the manner and at the time provided in G.S. 162A-3. Such notice shall contain a brief statement of the substance of said resolution and shall state the time and place of the public hearing to be held thereon. In the case of a political subdivision desiring to join the authority, the resolution shall set forth all of the information required under G.S. 162A-3 in connection with the original organization of the authority, including the name and address of the first member of the authority from the joining political subdivision.

(c) A certified copy of each such resolution signifying the desire of a political subdivision to withdraw from or to join an existing authority, together with proof of publication of the notice of hearing on each such resolution and, in cases where such resolution provides for the political subdivision joining the authority, certified copies of the resolution of the governing bodies creating the authority consenting to such joining shall be filed with the Secretary of State of North Carolina. If the Secretary of State finds that the resolutions conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of withdrawal, or a certificate of joinder, as the case may be, and shall record the same in an appropriate book of record in his office. The withdrawal or joining shall become effective upon the issuance of such certificate, and such certificate shall be conclusive evidence thereof. (1955, c. 1195, s. 4; 1969, c. 850; 1971, c. 892, s. 1; c. 1093, s. 6.)

Editor's Note. — The 1969 amendment rewrote the former first paragraph.

The first 1971 amendment substituted "Article" for "chapter" in the former last paragraph.

The second 1971 amendment rewrote this section.

§ **162A-5. Members of authority; organization; quorum.**—Each authority organized under this Article shall consist of the number of members as may be agreed upon by the participating political subdivision, such members to be selected by the respective political subdivision. A proportionate number (as nearly as can be) of members of the authority first appointed shall have terms expiring two years, four years and six years respectively from the date on which the creation of the authority becomes effective. Successor members and members appointed by a political subdivision subsequently joining the authority shall each be appointed for a term of six years, but any person appointed to fill the vacancy shall be appointed to serve only for the unexpired term and any member may be reappointed. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing body appointing said member.

Each member of the authority before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the secretary of the authority.

The authority shall select one of its members as chairman and another as vice-chairman and shall also select a secretary and a treasurer who may but need not be members of the authority. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the authority.

A majority of the members of the authority shall constitute a quorum and the affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all of the duties of the authority. The members of the authority shall serve without compensation but shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. (1955, c. 1195, s. 5; 1969, c. 850; 1971, c. 892, s. 1.)

Editor's Note.—The 1969 amendment rewrote the first paragraph.

The 1971 amendment substituted "Article" for "chapter" in the first sentence.

§ **162A-6. Powers of authority generally.**—Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each such authority is, subject to the provisions of G.S. 162A-7, hereby authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof or any sewer system or part thereof or any combination thereof within or without the participating political subdivisions or any thereof;

(6) To issue revenue bonds of the authority as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;

(7) To issue revenue refunding bonds of the authority as hereinafter provided;

(8) To combine any water system and any sewer system as a single system for the purpose of operation and financing;

(9) To fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any system operated by the authority;

(10) To acquire in the name of the authority by gift, purchase or the exercise of the right of eminent domain in accordance with the General Statutes of North Carolina which may be applicable to the exercise of such powers by municipalities or counties, any lands or rights in land or water rights in connection therewith, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement or operation of any water system or sewer system, and to hold and dispose of all real and personal property under its control; provided, that the taking of water from any stream or reservoir by any authority created under the provisions of this Article shall not vest in the taker any rights by prescription; provided, further, that nothing in this section shall affect rights by prescription, if any, now held by any municipality and which may be later transferred to any authority of which such municipality may become a member;

(11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys, and such employees and agents as may, in the judgment of the authority be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this Article;

(12) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any political subdivision, private corporation, co-partnership, association or individual providing for the acquisition, construction, reconstruction, improvement, extension, enlargement, operation or maintenance of any water system or sewer system or providing for or relating to the treatment and disposal of sewage or providing for or relating to any water system or the purchase or sale of water;

(13) To receive and accept from any federal, State or other public agency and any private agency, person or other entity, donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any sewer system or water system, and to agree to apply and

use the same in accordance with the terms and conditions under which the same are provided;

(14) To enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and

(15) To do all acts and things necessary or convenient to carry out the powers granted by this Article. (1955, c. 1195, s. 6; 1969, c. 850; 1971, c. 892, s. 1.)

Editor's Note.—The 1969 amendment inserted present subdivision (13) and renumbered former subdivisions (13) and (14) as (14) and (15).

The 1971 amendment substituted "Article" for "chapter" in subdivisions (10), (11) and (15).

§ **162A-8. Revenue bonds generally.**—Each authority is hereby authorized to issue, at one time or from time to time, revenue bonds of the authority for the purpose of paying all or any part of the cost of acquiring, constructing, reconstructing, improving, extending, enlarging or equipping any water system or sewer system or any part or any combination thereof. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates and shall bear interest at such rate or rates not exceeding seven per centum (7%) per annum, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. Such bonds shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by that Commission, except that the said Commission may sell any bonds issued pursuant to this Article at private sale and without advertisement, and for such price, with the consent of the authority, as it may determine to be for the best interests of the authority, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than seven per centum (7%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity. The limitation set forth above on the interest rate or rates which bonds issued hereunder shall bear shall not apply to any issue of bonds with respect to which any federal, State or other public agency shall have agreed to make annual interest grants to an authority, and in calculating the amount of interest required to be paid on the money received for such bonds within the limitation stated in the next preceding sentence the total of such annual interest grants shall be deducted from the total amount of interest on such bonds.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the authority may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery, except that such interim receipts or temporary bonds shall be approved by the Local Government Commission in the same manner as the definitive bonds are approved by said Commission under the provisions of this Article. Delivery of interim receipts or temporary bonds or of the bonds authorized pursuant to this Article to the purchaser or order, or delivery of definitive bonds in exchange for interim receipts or temporary bonds, shall be made in the same manner as municipal bonds may be delivered under the provisions of the Local Government Act. The authority may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Excepting the requirement herein that approval of the Local Government Commission shall be obtained, bonds may be issued under the provisions of this Article without obtaining the consent of any other commission, board, bureau or agency of the State or of any political subdivision, and without any other proceeding or the happening of other conditions or things than those proceedings, conditions or things which are specifically required by this Article.

Revenue bonds issued under the provisions of this Article shall not be deemed to constitute a debt of the State or of any political subdivision or a pledge of the faith and credit of the State or of any political subdivision, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1955, c. 1195, s. 7; 1969, c. 850; 1971, c. 892, s. 1.)

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Editor's Note.—The 1969 amendment substituted "seven per centum (7%)" for "five per centum (5%)" in the second and seventh sentences of the first paragraph and added the last sentence of the first paragraph.

Session Laws 1971, c. 892, s. 1, substituted "Article" for "chapter" throughout this section.

Amendment Effective July 1, 1973.—Session Laws 1971, c. 780, s. 32, effective July 1, 1973, amends this section to read as follows:

"**§ 162A-8. Revenue bonds.**—A water and sewer authority shall have power from time to time to issue revenue bonds under the Local Government Revenue Bond Act."

§ 162A-9. Rates and charges; contracts for water or services; deposits; delinquent charges.—Each authority shall fix, and may revise from time to time, reasonable rates, fees and other charges for the use of and for the services furnished or to be furnished by any water system or sewer system or parts thereof owned or operated by such authority. Such rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission or other agency of the State or of any political subdivision. Such rates, fees and charges shall be fixed and revised so that the revenues of the authority, together with any other available funds, will be sufficient at all times

(1) To pay the cost of maintaining, repairing and operating the systems or parts thereof owned or operated by the authority, including reserves for such purposes, and including provision for the payment of principal of and interest on indebtedness of a political subdivision or of political subdivisions which payment shall have been assumed by the authority, and

(2) To pay the principal of and the interest on all bonds issued by the authority under the provisions of this Article as the same shall become due and payable and to provide reserves therefor.

Notwithstanding any of the foregoing provisions of this section, the authority may enter into contracts relating to the collection, treatment or disposal of sewage or the purchase or sale of water which shall not be subject to revision except in accordance with their terms.

In order to insure the payment of such rates, fees and charges as the same shall become due and payable, the authority may, in addition to any other remedies which it may have

(1) Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent rates, fees and charges, and

(2) At the expiration of 30 days after any such rates, fees and charges become delinquent, discontinue supplying water or the services and facilities of any water system or sewer system of the authority. (1955, c. 1195, s. 8; 1971, c. 892, s. 1.)

Editor's Note. — The 1971 amendment substituted "Article" for "chapter" in the first clause (2).

§ 162A-10. Trust agreements securing bonds; pledges of revenues. —In the discretion of the authority, each or any issue of revenue bonds may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. The resolution authorizing the issuance of the bonds or such trust agreement may pledge the revenues to be received, but shall not convey or mortgage any water system or sewer system or any part thereof, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition, construction, reconstruction, improvement, maintenance, repair, operation and insurance of any such system or systems, the fixing and revising of rates, fees and charges, and the custody, safeguarding and application of all moneys, and for the employment of consulting engineers in connection with such acquisition, construction, reconstruction or operation. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. Such resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders. Such resolution or trust agreement may contain such other provisions in addition to the foregoing as the authority may deem reasonable and proper for the security of the bondholders. Except as in this Article otherwise provided, the authority may provide for the payment of the proceeds of the sale of the bonds and the revenues of any water system or sewer system or part thereof to such officer, board or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of such resolution or trust agreement may be treated as a part of the cost of operation.

All pledges of revenues under the provisions of this Article shall be valid and binding from the time when such pledge is made. All such revenues so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledges without any physical delivery thereof or further action, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. (1955, c. 1195, s. 9; 1971, c. 892, s. 1.)

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Editor's Note. — The 1971 amendment substituted "Article" for "chapter" in two places.

Repeal of Section.—Session Laws 1971, c. 780, s. 33, effective July 1, 1973, repeals this section.

§ **162A-11. Moneys received deemed trust funds.**—All moneys received pursuant to the authority of this Article shall be deemed to be trust funds, to be held and applied solely as provided in this Article. The resolution authorizing the issuance of bonds or the trust agreement securing such bonds shall provide that any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Article and such resolution or trust agreement may provide. (1955, c. 1195, s. 10; 1971, c. 892, s. 1.)

Editor's Note. — The 1971 amendment substituted "Article" for "chapter" in three places.

§ **162A-12. Bondholder's remedies.**—Any holder of revenue bonds issued under the provisions of this Article or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by the resolution authorizing the issuance of such bonds or such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this Article or by such resolution or trust agreement to be performed by the authority or by any officer thereof, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services and facilities furnished by a water system or sewer system. (1955, c. 1195, s. 11; 1971, c. 892, s. 1.)

Editor's Note. — The 1971 amendment substituted "Article" for "chapter" in two places.

§ **162A-13. Refunding bonds.**—Each authority is hereby authorized to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The authority is further authorized to issue from time to time revenue bonds of the authority for the combined purpose of

(1) Refunding any revenue bonds or revenue refunding bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and

(2) Paying all or any part of the cost of acquiring or constructing any additional water system or sewer system or part thereof, or any improvements, extensions or enlargements of any water system or sewer system.

The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the authority with respect to the same, shall be governed by the foregoing provisions of this Article insofar as the same may be applicable. (1955, c. 1195, s. 12; 1971, c. 892, s. 1.)

Editor's Note. — The 1971 amendment substituted "Article" for "chapter" in the last sentence.

§ **162A-14. Conveyances and contracts between political subdivisions and authority.**—The governing body of any political subdivision is hereby authorized and empowered:

(1) Subject to the approval of the Local Government Commission, to transfer jurisdiction over, and to lease, lend, grant or convey to an authority upon the request of the authority, upon such terms and conditions as the governing body of such political subdivision may agree with the authority as reasonable and fair, the whole or any part of any existing water system or sewer system or such real or personal property as may be necessary or desirable in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or corporation of any water system or sewer system or part thereof by the authority, including public roads and other property already devoted to public use;

(2) To make and enter into contracts or agreements with an authority, upon such terms and conditions and for such periods as are agreed to by the governing body of such political subdivision and the authority:

- a. For the collection, treatment or disposal of sewage by the authority or for the purchase of a supply of water from the authority;
- b. For the collecting by such political subdivision or by the authority of fees, rates or charges for water furnished to such political subdivision or to its inhabitants and for the services and facilities rendered to such political subdivision or to its inhabitants by any water system or sewer system of the authority, and for the enforcement of delinquent charges for such water, services and facilities; and
- c. For shutting off the supply of water furnished by any water system owned or operated by such political subdivision in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any rates, fees or charges for the use of or for the services furnished by any sewer system of the authority, within the time or times specified in such contract;

(3) To fix, and revise from time to time, rates, fees and other charges for water and for the services furnished or to be furnished by any water system or sewer system of the authority, or parts thereof, under any contract between the authority and such political subdivision, and to pledge all or any part of the proceeds of such rates, fees and charges to the payment of any obligation of such political subdivision under such contract; and

(4) In its discretion, to submit to the qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the authority under the provisions of this Article; provided, however, that before any contract or agreement under subdivision (1) of this section shall become effective as to a political subdivision such contract or agreement shall be submitted to and approved by a majority of the qualified electors voting at an election held under the election laws ap-

plicable to such political subdivision. (1955, c. 1195, s. 13; 1971, c. 892, s. 1.)

Editor's Note. — The 1971 amendment substituted "Article" for "chapter" in subdivision (4).

§ 162A-16. Contributions or advances to authority by political subdivisions.—Any political subdivision is hereby authorized to make contributions or advances to an authority, from any moneys which may be available for such purpose, to provide for the preliminary expenses of such authority in carrying out the provisions of this Article. Any such advances may be repaid to such political subdivisions from the proceeds of bonds issued by such authority under this Article. (1955, c. 1195, s. 15; 1971, c. 892, s. 1.)

Editor's Note. — The 1971 amendment substituted "Article" for "chapter" in two places.

§ 162A-17. Article regarded as supplemental.—This Article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds. (1955, c. 1195, s. 16; 1971, c. 892, s. 1.)

Editor's Note. — The 1971 amendment substituted "Article" for "chapter" in two places.

§ 162A-18. Actions against authority by riparian owners.—Any riparian owner alleging an injury as a result of any act of an authority created under this Article may maintain an action for relief against the acts of the authority either in the county where the lands of such riparian owner lie or in the county in which the principal office of the authority is maintained. (1955, c. 1195, s. 16½; 1971, c. 892, s. 1.)

Editor's Note. — The 1971 amendment substituted "Article" for "chapter."

§ 162A-19. Inconsistent laws declared inapplicable.—All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this Article. (1955, c. 1195, s. 17; 1971, c. 892, s. 1.)

Editor's Note. — The 1971 amendment substituted "Article" for "chapter."

ARTICLE 2.

Regional Water Supply Planning.

§ 162A-20. Title.—This Article shall be known and may be cited as the "Regional Water Supply Planning Act of 1971." (1971, c. 892, s. 1.)

Editor's Note.—Session Laws 1971, c. 892, s. 2, contains a severability clause.

Session Laws 1971, c. 892, s. 3, provides: "Subject to the provisions of G.S. 162A-25 as added by this act, all laws and clauses of laws in conflict with this act are hereby repealed."

§ 162A-21. Preamble.—The Legislative Research Commission was directed by Senate Resolution 875 of the 1969 General Assembly to study and report to the 1971 General Assembly on the need for legislation "concerning local and regional water supplies (including sources of water, and organization and administration of water systems)." Pursuant to said Resolution a report was prepared and adopted by the Legislative Research Commission in 1970 concerning local and regional water supplies. In this report the Legislative Research Commission made the following findings concerning the need for planning and developing regional water supply systems in order to provide adequate supplies of high quality water to the citizens of North Carolina, of which the General Assembly hereby takes cognizance:

(1) The existing pattern of public water supply development in North Carolina is dominated by many small systems serving few customers. Of the 1782 public water systems of record on July 1, 1970, according to State Board of Health statistics, over eighty percent (80%) were serving less than 1,000 people each. These small systems are often underfinanced, inadequately designed and maintained, difficult to coordinate with nearby regional systems, and generally inferior to systems serving larger communities as regards adequacy of source, facilities and quality. The situation which has developed reflects a need for better planning at both State and local levels.

(2) The State's population balance is steadily changing. Sparsely populated counties are losing residents to the more densely populated counties, while the State's total population is increasing. As this trend continues, small towns and communities will find it increasingly difficult to build and maintain public water supply systems. Also, as urban centers expand, and embrace relatively large geographical areas, economic factors will dictate that regional water systems be developed to serve these centers and to meet the demands of commercial and industrial development. It is estimated that county-wide or regional water systems are needed now by 50 counties.

(3) If the future public water supply needs of the State are to be met, a change in the existing pattern of public water supply development and management must be undertaken. Regional planning and development is an immediate need. The creation of county-wide or regional water supplies, with adequate interconnections, is necessary in order to provide an adequate supply of high quality water to the State's citizens, to make supplies less vulnerable to recurring drought conditions, and to have systems large enough to justify the costs of adequate facilities and of proper operation and maintenance.

(4) The State should provide a framework for comprehensive planning of regional water supply systems, and for the orderly coordination of local actions, so as to make the most efficient use of available water resources and economies of scale for construction, operation and maintenance. The State should also provide financial assistance to local governments and regional authorities in order to assist with the cost of developing comprehensive regional plans, and county-wide plans compatible with a regional system. (1971, c. 892, s. 1.)

§ **162A-22. Definition of regional water supply system.**—For the purposes of this Article "a regional water supply system" is defined as a public water supply system of a municipality, county, sanitary district, or other political subdivision of the State, or combination thereof, which provides, is intended to provide, or is capable of providing an adequate and safe supply of water to a substantial portion of the population within a county, or to a substantial water service area in a region composed of all or parts of two or more counties, or to a metropolitan area in two or more counties. (1971, c. 892, s. 1.)

§ **162A-23. State role and functions relating to local and regional water supply planning.**—(a) It should be the role of State government to provide a framework for comprehensive planning of regional water supply systems, and for the orderly coordination of local actions relating to water supply, so as to make possible the most efficient use of water resources and to help realize economies of scale in water supply systems. To these ends, it shall be the function of State government to:

(1) Identify major sources of raw water supply for regional systems, and raw water interconnections as may be desirable and feasible.
(2) Identify areas suitable for the development of regional systems.
(3) Establish priorities for regionalization.
(4) Develop plans for connecting proposed regional systems to major sources of supply, and for such finished water interconnections as may be desirable and feasible.
(5) Review and approve plans for proposed regional systems, and for proposed municipal and county-wide systems which are compatible with a regional plan.
(6) Administer a State program of financial assistance to local governments and regional planning agencies for the development of comprehensive plans for regional water systems, or county systems compatible with regional plans.
(7) Provide technical assistance to local and regional planning agencies, and to consulting engineering firms.

(b) Responsibility for carrying out the role of State government in regional water supply planning shall be assigned to the State Board of Health and the Department of Water and Air Resources. Promotion and coordination of regional water supply systems shall be a shared function of the Department of Water and Air Resources and the State Board of Health, with primary responsibility with regard to sources of raw water supply and transbasin or transwatershed diversions of water being allocated to the Department of Water and Air Resources, and with primary responsibility with regard to other aspects of regional water supply systems being allocated to the State Board of Health. (1971, c. 892, s. 1.)

§ **162A-24. Regional Water Supply Planning Revolving Fund established; conditions and procedures.**—(a) There is established under the control and direction of the Department of Administration a Regional Water Supply Planning Revolving Fund, to consist of any moneys that may be appropriated for use through the Fund by the General Assembly or that may be made available to it from any other source. The Department may make advances from the Fund to any county, municipality, sanitary district, or to counties and municipalities acting collectively or jointly as a regional water authority, for the purpose of meeting the cost of advance planning and engineering work necessary or desirable for the development of a comprehensive plan for a regional water supply system as defined in this Article. Such advances shall be subject to repayment by the recipient to the Department from the proceeds of bonds or other obligations for the regional water supply system, or from other funds available to the recipient including grants, except when, in the judgment of the State Board of Health and of the Department of Water and Air Resources, a proposed plan for development and construction of a county-wide or other regional water system is not feasible because of design and construction factors or because available sources of raw water supply are inadequate or because construction of a proposed system is not economically feasible, (but not if the applicant decides not to proceed with construction that has been planned and which the State Board of Health and the Department of Water and Air Resources have declared to be feasible).

(b) The Department of Administration shall not make any advance pursuant to this section without first referring the application and proposal to the State

Board of Health, the State agency responsible for public water supplies, for determination as to whether the conditions set forth below have been met. In making such determinations, the State Board of Health shall obtain and be guided by the recommendations of the Department of Water and Air Resources on matters for which that Department has responsibility by law:

(1) The proposed area is suitable for development of a regional water supply system from the standpoint of present and projected populations, industrial growth potential, and present and future sources of raw water.

(2) The applicant proposes to undertake long-range comprehensive planning to meet present and projected needs for high quality water service through the construction of a regional water supply system as defined in this Article. The determination by the Board of Health that the proposed system would be a "regional system," as defined by this Article, shall be conclusive.

(3) The applicant proposes to coordinate planning of the regional water supply with land use planning in the area, in order that both planning efforts will be compatible.

(4) The applicant proposes to employ an engineer licensed to practice in the State of North Carolina to prepare a comprehensive regional water supply plan, which plan will provide detailed information on source or sources of water to meet projected domestic and industrial water demands; proposed system, including raw water intake(s), treatment plant, storage facilities, distribution system, and other water works appurtenances; proposed interconnections with existing systems, and provisions for interconnections with other county, municipal and regional systems; phased development of systems to achieve ultimate objectives if economic feasibility is in question; projected water service areas; proposed equipment; estimates of cost and projected revenues; and methods of financing.

(c) In addition to the above conditions, the Department of Administration shall not make any advance to any applicant until the following conditions have also been met:

(1) The Department has determined that there is a reasonable prospect of federal (or State) aid in the financing of the projected work if the undertaking is one that will be dependent upon federal (or State) aid.

(2) The Department has received firm assurances from the applicant that the works or project, if feasible, will be undertaken.

(d) All advances made pursuant to this section shall be repaid in full, within one year of the start of construction on the projected system, or within six months after the issuance of bonds for the financing of construction of the system, or within six years from the date of the making of the advance, whichever comes first. The Department may, in its discretion, require the repayment of any advance in installments.

(e) The Department of Administration may adopt such rules and regulations with respect to the making of applications or the receipt of advances as are consistent with the terms and purpose of this section.

(f) The provisions of Chapter 159 of the General Statutes of North Carolina (Local Government Acts) shall not apply to advances made from the Regional Water Supply Planning Revolving Fund as authorized in this Article. (1971, c. 892, s. 1.)

§ **162A-25. Construction of Article.**—This Article shall be construed as providing supplemental authority in addition to the powers of the State Board of Health under General Statutes Chapter 130, the powers of the North Carolina Utilities Commission under General Statutes Chapter 62, and the powers of the

Department of Water and Air Resources under Articles 21 and 38 of General Statutes Chapter 143, and any other provisions of law concerning local and regional water supplies. (1971, c. 892, s. 1.)

Editor's Note. — Session Laws 1971, c. 892, s. 3, provides: "Subject to the provisions of G.S. 162A-25 as added by this act, all laws and clauses of laws in conflict with this act are hereby repealed."

ARTICLE 3.

Regional Sewage Disposal Planning.

§ **162A-26. Title.**—This Article shall be known and may be cited as the "Regional Sewage Disposal Planning Act of 1971." (1971, c. 870, s. 1.)

Editor's Note.—Session Laws 1971, c. 870, s. 2, makes the act effective July 1, 1971.

§ **162A-27. Definition of regional sewage disposal system.**—For the purposes of this Article "a regional sewage disposal system" is defined as a public sewage disposal system of a municipality, county, sanitary district, or other political subdivision of the State, or combination thereof, which provides, is intended to provide, or is capable of providing adequate collection, treatment, purification and disposal of sewage to a substantial portion of the population within a county, or a region composed of all or parts of two or more counties, or to a metropolitan area in two or more counties. (1971, c. 870, s. 1.)

§ **162A-28. Role and function of Board of Water and Air Resources.**—The North Carolina Board of Water and Air Resources, in order to provide a framework for comprehensive planning of regional sewage disposal systems and for orderly coordination of local actions relating to sewage disposal, to make possible the most efficient disposal of sewage and to help realize economies of scale in sewage disposal systems, shall perform the following functions:

(1) Identify major sources of sewage for regional systems and sewer system interconnections as may be desirable and feasible.

(2) Identify geographical areas of the State suitable for the development of regional sewage disposal systems.

(3) Establish priorities for regionalization.

(4) Develop plans for connecting proposed regional sewage disposal systems to major sources of sewage and for such sewer system interconnections as may be desirable and feasible.

(5) Review and approve plans for proposed regional sewage disposal systems and for proposed municipal and county-wide systems which are compatible with a regional plan.

(6) Administer a State program of financial assistance to local governments and regional planning agencies for the development of comprehensive plans for regional sewage disposal systems or county systems compatible with regional plans.

(7) Provide technical assistance to local and regional planning agencies and to consulting engineering firms. (1971, c. 870, s. 1.)

§ **162A-29. Regional Sewage Disposal Planning Revolving Fund established; conditions and procedures.**—(a) There is established under the control and direction of the Department of Administration a Regional Sewage Disposal Planning Revolving Fund, to consist of any moneys that may be appropriated for use through the Fund by the General Assembly or that may be made available to it from any other source. The Department may make advances from the Fund to any county, municipality, or sanitary district, or to counties and municipalities acting collectively or jointly as a regional sewer authority, for the purpose of meeting the cost of advance planning and engineering work necessary or desirable for the development of a comprehensive plan for a regional sewage disposal system as defined in this Article. Such advances shall be subject to repayment by the recipient to the Department from the proceeds of bonds or other obligations for the regional sewage disposal system, or from other funds available to the recipient including grants, except when, in the judgment of the Department of Water and Air Resources, a proposed plan for development and construction of a county-wide or other regional sewage disposal system is not feasible because of design and construction factors, or because of the effect that the sewage disposal system discharge will have upon water quality standards, or because construction of a proposed system is not economically feasible, (but not if the applicant decides not to proceed with construction that has been planned and which the Department of Water and Air Resources has declared to be feasible.)

(b) The Department of Administration shall not make any advance pursuant to this section without first referring the application and proposal to the State Department of Water and Air Resources, the State agency responsible for water pollution control, for determination as to whether the conditions set forth below have been met:

(1) The proposed area is suitable for development of a regional sewage disposal system from the standpoint of present and projected populations, industrial growth potential, and present and future sources of sewage.

(2) The applicant proposes to undertake long-range comprehensive planning to meet present and projected needs for high quality sewage disposal through the construction of a regional sewage disposal system as defined in this Article. The determination by the Department of Water and Air Resources that the proposed system would be a "regional system," as defined by this Article, shall be conclusive.

(3) The applicant proposes to coordinate planning of the regional sewage disposal system with land use planning in the area, in order that both planning efforts will be compatible.

(4) The applicant proposes to employ an engineer licensed to practice in the State of North Carolina to prepare a comprehensive regional sewage disposal plan, which plan will provide detailed information on the source or sources of sewage; the proposed system, including all facilities and appurtenances thereto for the collection, transmission, treatment, purification and disposal of sewage; any proposed interconnection with existing systems, and provisions for interconnections with other county, municipal and regional systems; the phased development of systems to achieve ultimate objectives if economic feasibility is in question; projected sewage disposal service areas; proposed equipment; estimates of cost and projected revenues; and methods of financing.

(c) In addition to the above conditions, the Department of Administration shall not make any advance to any applicant until the following conditions have also been met:

(1) The Department has determined that there is a reasonable prospect of federal (or State) aid in the financing of the projected work if the undertaking is one that will be dependent upon federal (or State) aid.

(2) The Department has received firm assurances from the applicant that the work or project, if feasible, will be undertaken.

(d) All advances made pursuant to this section shall be repaid in full, within one year of the start of construction on the projected system, or within six months after the issuance of bonds for the financing of construction of the system, or within six years from the date of the making of the advance, whichever comes first. The Department may, in its discretion, require the repayment of any advance in installments.

(e) The Department of Administration may adopt such rules and regulations with respect to the making of applications or the receipt of advances as are consistent with the terms and purpose of this section.

(f) The provisions of Chapter 159 of the General Statutes of North Carolina (Local Government Acts) shall not apply to advances made from the Regional Sewage Disposal Planning Revolving Fund as authorized in this Article. (1971, c. 870, s. 1.)

§ **162A-30. Construction of Article.**—This Article shall be construed as providing supplemental authority in addition to the powers of the North Carolina Utilities Commission under Chapter 62 of the North Carolina General Statutes, the North Carolina Board of Water and Air Resources under Articles 21 and 38 of Chapter 143 of the North Carolina General Statutes, and the North Carolina State Board of Health under General Statutes Chapter 130, and any other provisions of law concerning local and regional sewage disposal. (1971, c. 870, s. 1.)

ARTICLE 4.

Metropolitan Water Districts.

§ **162A-31. Short title.**—This Article shall be known and may be cited as the Metropolitan Water Districts Act. (1971, c. 815, s. 1.)

§ **162A-32. Definitions; description of boundaries.**—(a) As used in this Article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) "Board of commissioners" or "commissioners" shall mean the duly elected board of commissioners of the county in which a metropolitan water district shall be created under the provisions of this Article.

(2) "City council" or "council" shall mean the duly elected city council of any municipality located within the State.

(3) "Cost" as applied to a water system or sewerage system shall mean the cost of acquiring, constructing, reconstructing, improving, extending, enlarging, repairing and equipping any such system, and shall include the cost of all labor and materials, machinery and equipment, lands, property, rights, easements and franchises, plans and specifications, surveys and estimates of cost and of revenues, and planning, engineering, financial advice, and legal services, financing charges, interest prior to and during construction and, if deemed advisable by a district board, for one year after the estimated date of completion of construction, and all other expenses necessary or incident to determining the feasibility or practicability of any such undertaking, administrative expense and such other expenses, including reasonable provision for working capital and a reserve for debt service, as may be necessary or incident to the financing herein authorized, and may also include any obligation or expense incurred by a district or by any political subdivision prior to the issuance of bonds under the provisions of this Article in connection with any such undertaking or any of the foregoing items of cost.

(4) "District" shall mean a metropolitan water district created under the provisions of this Article.

(5) "District board" shall mean the district board of the metropolitan water district created under the provisions of this Article.

(6) "General obligation bonds" shall mean bonds of a metropolitan water district for the payment of which and the interest thereon all the taxable property within said district is subject to the levy of an ad valorem tax without limitation of rate or amount.

(7) "Governing body" shall mean the board, board of trustees, commission,

board of commissioners, council or other body, by whatever name it may be known, of a political subdivision including, but without limitation, other water or sewer districts or the trustees thereof within the State of North Carolina in which the general legislative powers thereof are vested.

(8) "Person" shall mean any and all persons including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies or private or public corporations organized and existing under the laws of the State or any other state or county.

(9) "Political subdivision" shall mean any county, city, town, incorporated village, sanitary district, water district, sewer district, special purpose district or other political subdivision or public corporation of this State now or hereafter created or established.

(10) "Revenue bonds" shall mean bonds the principal of and the interest on which are payable solely from revenues of a water system or systems or a sewerage system or systems or both owned or operated by a metropolitan water district created under the provisions of this Article.

(11) "Revenues" shall mean all moneys received by a metropolitan water district from, in connection with, or as a result of its ownership or control or operation of a water system or systems or a sewerage system or systems, or both, including, without limitation and as deemed advisable by the district board, moneys received from the United States of America or any agency thereof, pursuant to an agreement with the district board pertaining to the water system or the sewerage system or both.

(12) "Sewerage system" shall embrace both sewers and sewage disposal systems and any part or parts thereof, either within or without the limits of a district, all property, rights, easements and franchises relating thereto, and any and all buildings and other structures deemed necessary or useful by a district board in connection with the operation or maintenance thereof.

(13) "Sewers" shall mean any mains, pipes and laterals, including pumping stations for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system, and all property, rights, easements, and franchises related thereto and deemed necessary or convenient by a district board for the operation and maintenance thereof.

(14) "Water distribution system" shall include aqueducts, mains, laterals, pumping stations, distributing reservoirs, standpipes, tanks, hydrants, services, meters, valves, and all necessary appurtenances, and all property, rights, easements, and franchises related thereto and deemed necessary or convenient by a district board for the operation and maintenance thereof.

(15) "Water system" shall mean and include all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, and any integral part thereof, including but not limited to water supply systems, water distribution systems, sources of water supply including lakes, reservoirs and wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by a district board for the operation or maintenance thereof.

(16) "Water treatment or purification plant" shall mean any plant, system, facility, or property, used or useful or having the present capacity for

future use in connection with the treatment or purification of water, or any integral part thereof; and all necessary appurtenances or equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by a district board for the operation thereof.

(b) Whenever this Article requires that the boundaries of an area be described, it shall be sufficient if the boundaries are described in a manner which conveys an understanding of the location of the land and may be

(1) By reference to a map,
(2) By metes and bounds,
(3) By general description referring to natural boundaries, boundaries of political subdivisions, existing water or sewer districts, or portions thereof, or boundaries of particular tracts or parcels of land, or
(4) Any combination of the foregoing. (1971, c. 815, s. 2.)

§ 162A-33. Procedure for creation; resolutions and petitions for creation; notice to and action by State Board of Health; notice and public hearing; resolutions creating districts; actions to set aside proceedings.—Any two or more political subdivisions in a county, or any political subdivision or subdivisions, including any existing water or sewer district, and any unincorporated area or areas located within the same county, which political subdivisions or areas need not be contiguous, may petition the board of commissioners for the creation of a metropolitan water district under the provisions of this Article by filing with the board of commissioners:

(1) A resolution of the governing body of each such political subdivision stating the necessity for the creation of a metropolitan water district under the provisions of this Article in order to preserve and promote the public health and welfare within the area of the proposed district, and requesting the creation of a metropolitan water district having the boundaries set forth in said resolution, and
(2) If any unincorporated area is to be included in such district, a petition, signed by not less than fifteen per centum (15%) of the voters resident within such area, defining the boundaries of such area, stating the necessity for the creation of a metropolitan water district under the provisions of this Article in order to preserve and promote the public health and welfare within the proposed district, and requesting the creation of a metropolitan water district having the boundaries set forth in such petition for such district.

If any water district, sewer district or special purpose district shall encompass wholly or in part within its boundaries a city or town, no such water district, sewer district or special purpose district may petition for inclusion within a metropolitan water district unless the governing body of such city or town shall approve such petition or shall also petition for its inclusion within such metropolitan water district.

Upon the receipt of such resolutions and petitions requesting the creation of a metropolitan water district, the board of commissioners, through its chairman shall notify the State Board of Health of the receipt of such resolutions and petitions, and shall request that a representative of the State Board of Health hold a joint public hearing with the board of commissioners concerning the creation of the proposed metropolitan water district. The Director of the State Board of Health and the chairman of the board of commissioners shall name a time and place within the proposed district at which the public hearing shall be held. The chairman of the board of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper circulating in the proposed district at least once a week for four successive weeks, the first publication to be at least 30 days prior to such hearing.

In the event all matters pertaining to the creation of such metropolitan water district cannot be concluded at such hearing, such hearing may be continued to a time and place within the proposed district determined by the board of commissioners with the concurrence of the representative of the State Board of Health.

If, after such hearing, the State Board of Health and the board of commissioners shall deem it advisable to comply with the request of such resolutions and petitions, and determine that the preservation and promotion of the public health and welfare in the area or areas described in such resolutions and petitions require that a metropolitan water district should be created and established, the State Board of Health shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a metropolitan water district under the name and style of ".................. Metropolitan Water District of .... County"; provided that the State Board of Health may make minor deviations in the boundaries from those prescribed in the resolutions and petitions upon the State Board of Health determining that such deviations are advisable in the interest of the public health, provided no such district shall include any political subdivision which has not petitioned for inclusion as provided for in this Article.

The State Board of Health shall cause copies of the resolution creating the metropolitan water district to be sent to the board of commissioners and to the governing body of each political subdivision included in the district. The board of commissioners shall cause a copy of such resolution of the State Board of Health to be published in a newspaper circulating within the district once in each of two successive weeks, and a notice substantially in the following form shall be published with such resolution:

"The foregoing resolution was passed by the State Board of Health on the ...... day of ...., 19...., and was first published on the ...... day of ...., 19.....

Any action or proceeding questioning the validity of said resolution or the creation of the metropolitan water district therein described must be commenced within 30 days after the first publication of said resolution.

....

Clerk, Board of Commissioners for

.... County."

Any action or proceeding in any court to set aside a resolution creating a metropolitan water district or to obtain any other relief upon the ground that such resolution or any proceeding or action taken with respect to the creation of such district is invalid, must be commenced within 30 days after the first publication of the resolution and said notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the creation of the metropolitan water district therein described shall be asserted, nor shall the validity of the resolution or of the creation of such metropolitan water district be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

Notwithstanding the provisions of G.S. 160-2(6), after the creation of a water district pursuant to the provisions of this Article a municipality or other political subdivision which owns or operates an existing water system or sewer system may lease, contract, assign or convey such system or systems to the district under and subject to such terms and conditions and for such considerations as it may deem advisable for the general welfare and benefit of its citizens. (1971, c. 815, s. 3.)

§ 162A-34. District board; composition, appointment, term, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members.—(a) Immediately after the creation of the district, the board of commissioners shall appoint three members of the district board and the governing body of each political subdivision included in the district shall appoint one member, except that if any city or town has a population, according to the latest decennial census, in excess of the total population of the remaining cities and towns within the district, or where there are no other cities or towns involved, if the census population is in excess of the total population of the remainder of the district, the governing body shall appoint three members. No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board of commissioners shall be the governing body, the three appointees designated by the board of commissioners shall be selected from within the district and shall be deemed to represent all such political subdivisions. The members of the district board first appointed shall have terms expiring one year, two years and three years, respectively, from the date of adoption of the resolution of the State Board of Health creating the district, as the board of commissioners shall determine, provided that of the three members appointed by any governing body, not more than one such member shall be appointed for a three-year term. Successive members shall each be appointed to serve only for the unexpired term and any member of the district board may be reappointed. Appointments of successor members shall, in each instance, be made by the governing body making the initial appointment or appointments. All members shall serve until their successors have been duly appointed and qualified, and any member of the district board may be removed for cause by the governing body appointing him.

Each member of the district board before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the clerk of the board of commissioners.

The district board shall elect one of its members as chairman and another as vice-chairman and shall appoint a secretary and a treasurer who may but need not be members of the district board. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the district board.

The district board shall meet regularly at such places and dates as determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of such meeting. A majority of the members of the district board shall constitute a quorum and the affirmative vote of a majority of the members of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member including the chairman shall be entitled to vote on any question. The members of the district board may receive compensation in an amount to be determined by the board, but not to exceed ten dollars ($10.00) for each meeting attended, and may be reimbursed the amount of actual expenses incurred by them in the performance of their duties.

(b) Any metropolitan water district wholly within the corporate limits of two or more municipalities shall be governed by a district board consisting of members appointed by the governing body of each political subdivision (municipal corporation) included wholly or partially in the district and an additional at-large member appointed by the other members of the district board as provided in this subsection. The governing body of each constituent municipality shall initially appoint two members from its qualified electors, one for a term expiring the first day of July after the first succeeding regular election in which municipal officers shall be elected by the municipality from which he is appointed, and the other for a term expiring the first day of July after the second succeeding regular ection of municipal officers in the municipality. Thereafter, subsequent to each nsuing regular election of municipal officers the governing body of each munici- al corporation composing any part of the metropolitan water district shall ap- oint one member to the district board for a term of four years beginning on the rst day of July. The one additional at-large member of the district board shall e a qualified elector of a constituent municipality of the district and appointed itially and quadrennially thereafter by majority vote of the other district board nembership for a term of four years which shall expire on the first day of August n every fourth calendar year thereafter.

Any vacancy in district board membership shall be filled by appointment of the riginal appointing authority for the remainder of the unexpired term.

The provisions of subsection (a) in particular and of this Article generally not nconsistent with this subsection shall also apply.

(c) In those cases where a district is created which includes a municipality hich owns an existing water and sewer system and where the county commis- oners are acting as or have been appointed as trustees of a separate water or ewer system, or both which will be included within the district along with an xisting municipal system, the district board shall be comprised of seven mem- ers designated as follows: Three county commissioners and three members of ne city council of the municipality, said members to be selected by majority vote f the governing body on which they serve. These six members of the district oard shall appoint a seventh member who shall also serve as chairman of the istrict board and whose term shall automatically expire upon the seating of ither a new board of commissioners, or of a new council of the municipality.

The chairman of the district board will be eligible, however, for reappointment, pon the expiration of his or her current term, by the next district board selected pon and after the seating of either a new board of commissioners or new council f the municipality. The chairman of the district board shall take and subscribe n oath or affirmation to support the Constitution and laws of the United States nd of this State, and to discharge faithfully the duties of his office, and a record f each such oath shall be filed with the clerk of the board of commissioners and ne clerk of the municipality. The other six members will serve upon said board orollary to the responsibilities and duties of their respective elective offices and uch service upon the district board will not constitute the holding of a public ffice. No compensation shall be paid to any member of the district board except or the chairman, and his compensation shall be fixed by the remaining six mem- ers. Except as provided above, no additional oath or affirmation shall be required f the members of the district board. No county commissioner or member of the ouncil of the municipality shall continue to serve upon the district board sub- equent to the termination of his or her current elective term, except upon re- lection to said office.

The district board shall appoint a secretary and a treasurer who will not be nembers of the district board. The terms of office of the secretary and treasurer hall be as provided in the bylaws of the district board and the compensation of aid officers shall be fixed by the district board. The treasurer shall furnish bond n some security company authorized to do business in North Carolina, the mount to be fixed by the district board in a sum not less than five thousand dol- ars ($5,000), which bond shall be approved by the district board and shall be ontinued upon the faithful performance of his duties. Every official, employee or gent of the district who handles or has custody of more than one hundred dol- ars ($100.00) of such district funds at any time, shall before assuming his duties s such be required to furnish bond in some security company authorized to do usiness in North Carolina, the amount to be fixed by the district board, which ond shall be approved by the district board and shall be continued upon the aithful performance of his duties in an amount sufficient to protect the district. ll bonds required by this section shall be filed with the clerk of the municipality.

The district board shall meet regularly and no less than monthly, at such plac and dates as determined by the board. Special meetings may be called by th chairman on his own initiative and shall be called by him upon request of two o more members of the board. All members shall be notified in writing at least 2 hours in advance of any meeting. A majority of the members of the district boar shall constitute a quorum and the affirmative vote of a majority of the distric board present at any meeting thereof shall be necessary for any action taken b the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the dutie of the district board. Each member, including the chairman, shall be entitled t vote upon any question.

Any vacancy in district board membership, except that of the chairman, shal be filled by appointment of the original appointing authority for the remainder o the unexpired term. Each governing body may, by majority vote, replace at an time its representatives on said district board. (1971, c. 815, s. 4.)

§ 162A-35. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; action questioning validity of elections.—If, at any time subsequent to the creatio of a district, there shall be filed with the district board a resolution of the governing body of a political subdivision, or a petition, signed by not less than fiftee per centum (15%) of the voters resident within an unincorporated area, requestin inclusion in the district of such political subdivision or unincorporated area, and i the district board shall favor the inclusion in the district of such political subdivision or unincorporated area, the district board shall notify the board of commissioners and the board of commissioners, through its chairman, shall thereupon request that a representative of the State Board of Health hold a join public hearing with the board of commissioners concerning the inclusion of suc political subdivision or unincorporated area in the district. The Director of th State Board of Health and the chairman of the board of commissioners shall nam a time and place within the district at which the public hearing shall be held. Th chairman of the board of commissioners shall give prior notice of such hearin by posting a notice at the courthouse door of the county and also by publicatio in a newspaper circulating in the district and in any such political subdivisio or unincorporated area at least once a week for four successive weeks, the firs publication to be at least 30 days prior to such hearing. In the event all matter pertaining to the inclusion of such political subdivision or unincorporated are cannot be included at such hearing, such hearing may be continued to a time an place within the district determined by the board of commissioners with the concurrence of the representative of the State Board of Health.

If, after such hearing, the State Board of Health and the board of commissioner shall determine that the preservation and promotion of the public health and welfare require that such political subdivision or unincorporated area be included i the district, the State Board of Health shall adopt a resolution to that effect, defining the boundaries of the district including such political subdivision or unincorporated area which has filed a resolution or petition as provided for in thi section, and declaring such political subdivision or unincorporated area to be included in the district, subject to the approval, as to the inclusion of such politica subdivision, of a majority of the qualified voters of such political subdivision, o as to the inclusion of such unincorporated area, of a majority of the qualifie voters of such unincorporated area, voting at an election thereon to be called an held in such political subdivision or unincorporated area. When an election i required to be held within both a political subdivision and an unincorporate area, a separate election shall be called and held for the unincorporated area an a separate election shall be called and held for the political subdivision. Suc separate elections, although independent one from the other, shall be called an held within each political subdivision and within the unincorporated area simultaneously on the same date.

If, at or prior to such public hearing, there shall be filed with the district board
petition signed by not less than fifteen per centum (15%) of the voters resid-
g in the district requesting an election to be held therein on the question of
cluding any such political subdivision or unincorporated area, the district board
all certify a copy of such petition to the board of commissioners and the board
commissioners shall order and provide for the submission of such question to
e qualified voters within the district. Any such election may be held on the
me day as the election in the political subdivision or unincorporated area pro-
sed to be included in the district. Elections and the registration therefor within
e district and an unincorporated area may be held pursuant to a single notice.
otice of registration and election within a political subdivision shall be given
separate notice.

The date or dates of any such election or elections, the election officers, the
ting places and the election precincts shall be determined by the board of com-
issioners which shall also provide any necessary registration and polling books,
d the expenses of holding any such election shall be paid from the funds of the
strict; provided, however, that elections held within a city or town shall be
nducted as required by law for special municipal elections, except as such may
modified by the provisions of this Article, and the expense of such municipal
ections shall be paid for by such city or town.

Notice of any such election shall be given by publication once a week for three
ccessive weeks, the first publication to be at least 30 days before any such elec-
on, in a newspaper circulating in the political subdivision or unincorporated area
be included in the district, and, if an election is to be held in the district, in a
wspaper circulating in the district. The notice shall state (i) the boundaries of
ch political subdivision or unincorporated area, (ii) the boundaries of the dis-
ict after the inclusion of such political subdivision or unincorporated area, and
ii) in the case of a political subdivision proposed to be included in the district,
at if a majority of the qualified voters voting at such election in such political
bdivision and, if an election is held in the district, a majority of the qualified
ters voting at such election in the district, shall vote in favor of the inclusion of
ch political subdivision, then such political subdivision so included in the dis-
ict shall be subject to all debts of the district, and, in the case of an unincorpo-
ted area proposed to be included in the district, that if a majority of the quali-
d voters voting at such election in such unincorporated area and, if an election
held in the district, a majority of the qualified voters voting at such election
the district, shall vote in favor of the inclusion of such unincorporated area,
en such unincorporated area so included in the district shall be subject to all
bts of the district.

A new registration of the qualified voters in the political subdivision or unin-
rporated area to be included in the district shall be ordered by the board of
mmissioners and, if an election is to be held in the district and such election is
e first election held in the district after its creation, a new registration of the
ualified voters of the district shall be ordered; provided, however, that within
city or town which is voting on the question of inclusion in the district, a new
gistration may be ordered at the discretion of the governing body thereof and
ch registration shall be conducted in accordance with the law applicable to the
gistration of voters in municipal elections. If an election has previously been
eld in the district, a supplemental registration of all qualified voters not thereto-
re registered may, at the discretion of the board of commissioners, be ordered
d held in accordance with the provisions for registration as herein set forth.
otice of any such registration shall be given by the board of commissioners by
ublication once at least 30 days before the close of the registration books and
ch notice of registration may be considered one of the three notices required of
e election. The time and manner of any such registration shall, as near as may
, conform with that of the registration of voters provided in G.S. 163-31. The
tice of any such registration shall state the dates on which the books will be

open on Saturdays. The books for any such registration shall close on the second Saturday before the election. The Saturday before election day shall be challenge day and, except as otherwise provided in this section, any such election shall be held in accordance with the law governing general elections.

A ballot shall be furnished to each qualified voter in any such election, which ballot may contain the words "For inclusion in the .... Metropolitan Water District of .... County of ...." and the words "Against inclusion in the .... Metropolitan Water District of .... County of ....," with squares opposite said affirmative and negative forms of the question of inclusion submitted to the voters, in one of which squares the voter may make a cross (X) mark. Voting machines may, in the discretion of the commissioners, be utilized for said election.

If a majority of the qualified voters voting at such election in a political subdivision proposed to be included in the district and, if an election is held in the district, a majority of the qualified voters voting at such election in the district shall vote in favor of the inclusion of such political subdivision, then the district shall be deemed to be enlarged to include such political subdivision, from and after the date of the declaration of the result of the election by the district board, and such political subdivision shall be subject to all debts of the district. If a majority of the qualified voters voting at such election in an unincorporated area proposed to be included in the district and, if an election is held in the district, a majority of the qualified voters voting at such election in the district shall vote in favor of the inclusion of such unincorporated area, then the district shall be deemed to be enlarged to include such unincorporated area from and after the date of the declaration of the result of the election by the district board, and such unincorporated area shall be subject to all debts of the district.

The returns of any such election held in an unincorporated area shall be canvassed by the board of commissioners and certified to the district board. The returns of any such election held within a municipality shall be canvassed by the municipal governing body and certified to the district board. Upon receipt of the certified election returns, the district board shall declare the results thereof.

A statement of the result of any such election shall be prepared and signed by a majority of the members of the district board, which statement shall show the date of any such election, the number of qualified voters within the political subdivision or unincorporated area who voted for and against the inclusion thereof and, if an election has been held within the district, the number of qualified voters within the district who voted for and against such inclusion. If a majority of the qualified voters voting at the election in the political subdivision or unincorporated area to be included and, if an election has been held in the district, a majority of the qualified voters voting at the election in the district shall vote in favor of such inclusion, the statement of result shall so declare the result of the election and state that such political subdivision or unincorporated area is from the date of such declaration a part of the district and subject to all debts thereof. Such statement shall be published once. No right of action or defense founded upon the invalidity of any such election shall be asserted, nor shall the validity of any such election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of such statement. (1971, c. 815, s. 5.)

§ **162A-36. Powers generally; fiscal year.**—(a) Each district shall be deemed to be a public body and body politic and corporate, exercising public and essential governmental functions, to provide for the preservation and promotion of the public health and welfare, and said district is hereby authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business not in conflict with this or other law;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office or offices at such place or places in the district as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To acquire, lease as lessor or lessee, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof, and any sewerage system or part thereof, except interceptors, treatment plants and facilities constituting a system operated by a metropolitan sewage district within or without the district; provided, however, that no such water or sewerage system or part thereof, shall be located in any city, town or incorporated village except with the consent of the governing body thereof, and each such governing body is hereby authorized to grant such consent;

(6) To issue general obligation bonds and revenue bonds of the district as hereinafter provided, to pay the costs of a water or sewerage system or systems;

(7) To issue general obligation refunding bonds and revenue refunding bonds of the district as hereinafter provided;

(8) To fix and revise from time to time and to collect rents, rates, fees and other charges for the use of the services and facilities furnished by any water or sewerage system;

(9) To cause taxes to be levied and collected upon all taxable property within the district sufficient to meet the obligations of the district, to pay the costs of maintaining, repairing and operating any water or sewerage system or systems, and to pay all obligations incurred by the district in the performance of its legal undertakings and functions;

(10) To acquire in the name of the district, either within or without the corporate limits of the district, by gift, purchase, lease or the exercise of the right of eminent domain, which right shall be exercised in accordance with the provisions of Chapter 40 of the General Statutes, any improved or unimproved lands or rights in lands, and to acquire by lease or purchase such personal property as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any water or sewerage system or systems, and to hold and dispose of real and personal property under its control;

(11) To make and enter into all contracts, leases and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder;

(12) To employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants, attorneys, employees and agents as may, in the judgment of the district board, be deemed necessary, and to fix their compensation; provided, however, that the provisions of G.S. 159-20 shall be complied with to the extent that the same shall be applicable;

(13) To receive and accept from the United States of America or the State of North Carolina, or any agency or instrumentality thereof loans, grants, advances or contributions for or in aid of the planning, acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any water or sewerage system or systems, to agree to such reasonable conditions or requirements as may be imposed, and to receive and accept contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes of which such loans, grants, advances or contributions may be made;

(14) To negotiate and pay close-out costs involved in the acquisition or lease of existing water supply or sewerage systems;

(15) To determine the extent to which local water distribution system and local sewerage system improvements will be financed out of district revenues and to contract with other political subdivisions for construction of facilities to be jointly financed and whose title would be vested in the district;

(16) To lease from any city or town or any other municipal corporation, or from any water or sewage district, any water or sewerage system or portions thereof upon such terms and conditions and for such considerations as may to the district board be deemed fair and reasonable.

(17) The metropolitan water district is authorized and empowered, through its district board, officers, agents and employees, to cause any user of water who shall fail to pay promptly his water rent or use bill for any month to be cut off, and his right to further use of water from said district to be discontinued until payment of any water rent or use arrearages.

(18) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

(b) (1) Each metropolitan water district shall publish an annual financial report and its books shall be open for public inspection.

(2) Each district shall keep its accounts on the basis of a fiscal year commencing on the 1st day of July and ending on the 30th day of June of the following year.

(3) District revenues shall be used solely for the operation, improvement or benefit of the district's water and sewerage systems and the leasing of any portion thereof and to pay the principal and interest on bonds issued by the district. Said revenues shall not be used for the payment of interest or amortization of any utility bonds previously issued by any city, town or water or sewerage district.

(4) A district may provide water to a city or county or portion thereof within the district for governmental purposes without charge or at reduced rates. (1971, c. 815, s. 6.)

§ **162A-37. Authority to issue bonds generally.**—Each district is hereby authorized and empowered to issue its general obligation bonds or revenue bonds, at one time or from time to time, for the purpose of providing funds for paying all or any part of the cost of a water system or sewerage system, or both. (1971, c. 815, s. 7.)

§ **162A-38. Contents of order authorizing issuance of general obligation bonds.**—The issuance of general obligation bonds of a district may be authorized by an order of the district board which shall state:

(1) In brief and general terms, the purpose for which the bonds are to be issued;

(2) The maximum aggregate principal amount of the bonds;

(3) That a tax sufficient to pay the principal of and the interest on the bonds when due shall be annually levied and collected on all taxable property within the district;

(4) That the order shall take effect when and if it is approved by a majority of the qualified voters of the district voting at an election thereon. (1971, c. 815, s. 8.)

§ **162A-39. Securing payment of general obligation bonds.**—Any general obligation bonds of a district may be additionally secured by a pledge of the revenues of the water or sewerage system or any portion or portions thereof. In the discretion of the district board the order authorizing any such general obligaion bonds may state that there may be pledged to the payment of the bonds and he interest thereon revenues of the water or sewerage system or both available herefor if and to the extent that the district board shall thereafter determine by esolution prior to the issuance of bonds, and that a tax sufficient to pay the prin-ipal of and the interest on the bonds shall be annually levied and collected on all axable property within the district but in the event that any revenues of the water ystem or sewerage system, or both, shall be pledged to the payment of the bonds uch tax may be reduced by the amount of such revenues available for the pay-nent of such principal and interest. (1971, c. 815, s. 9.)

§ 162A-40. General obligation bonds may be issued within five years ›f order; repeal of order.—After an order authorizing general obligation bonds akes effect, bonds may be issued in conformity with its provisions at any time vithin five years after the order takes effect, unless the order shall within such ›eriod have been repealed by the district board, which repeal is permitted (without he privilege of referendum upon the question of repeal) unless notes shall have ›een issued in anticipation of the receipt of the proceeds of the bonds and shall be ›utstanding. (1971, c. 815, s. 10.)

§ 162A-41. Publication of order authorizing general obligation ›onds; actions questioning validity of order.—An order authorizing general ›bligation bonds shall be published in a newspaper circulating in the district once n each of two successive weeks after its passage. A notice substantially in the fol-owing form shall be published with the order:

"The foregoing order was passed by the metropolitan water district of .... on the .... day of ...., 19.., and was first published on he .... day of ...., 19...

Any action or proceeding questioning the validity of said order must be com-nenced within 30 days after the first publication of said order.

....

Secretary"

Any action or proceeding in any court to set aside an order authorizing general obligation bonds, or to obtain any other relief upon the ground that such order is invalid, must be commenced within 30 days after the first publication of the order and said notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the order shall be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1971, c. 815, s. 11.)

§ 162A-42. Election on issuance of general obligation bonds; actions questioning validity.—Upon the adoption of an order authorizing general obligation bonds, the board of commissioners shall call an election within the district on the issuance of such bonds.

The date of any such election, the election officers, the polling place or places and the election precinct or precincts shall be determined by the board of commissioners which shall also provide any necessary registration and polling books, and the expenses of holding any such registration and election shall be paid from funds of the district.

Notice of any such election shall be given by publication once a week for three successive weeks, the first publication to be at least 30 days before any such election, in the newspaper circulating in the district. Such notice shall state briefly the purpose for which the bonds are to be issued, the maximum amount of the bonds, that a tax will be levied for the payment thereof and the date of the election and the location of the polling place or places. If such election is the first election to be held in the district, a new registration of the qualified voters of the district shall be ordered. If an election has previously been held in the district, a new registration or a supplemental registration of all qualified voters not theretofore registered may, at the discretion of the board of commissioners, be ordered and held in accordance with the provisions for registration as herein set forth. Notice of any such registration shall be given by the board of commissioners by publication once at least 30 days before the close of the registration books and such notice of registration may be considered one of the three notices required of the election. The time and manner of any such registration shall, as near as may be, conform with that of the registration of voters provided in G.S. 163-31. The notice of any such registration shall state the days on which the books will be open for the registration of voters and the place or places at which they will be open on Saturdays. The books for any such registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day and, except as otherwise provided in this article, any such election shall be held in accordance with the laws governing general elections.

A ballot shall be furnished to each qualified voter, which ballot may contain the words "For approval of the bond order adopted by the Metropolitan Water District of .... on the .... day of ...., 19.., authorizing the issuance of not exceeding $.......... general obligation bonds of said Metropolitan Water District for the purpose of *(briefly stating the purpose)* and the levy of a tax for the payment thereof" and the words "Against approval of the bond order adopted by the Metropolitan Water District of .... on the .... day of ...., 19.., authorizing the issuance of not exceeding $........ general obligation bonds of said Metropolitan Water District for the purpose of (*briefly stating the purpose*) and the levy of a tax for the payment thereof," with squares opposite said affirmative and negative forms of the question, in one of which squares the voter may make a cross (X) mark. Voting machines may in the discretion of the commissioners be utilized for said election.

The returns of any such election shall be canvassed by the board of commissioners and certified to the district board which shall declare the result thereof.

The district board shall prepare a statement showing the number of votes cast for and against the order and declaring the result of the election, which statement shall be signed by a majority of the members of the district board, recorded in the minutes of the district board and published once in a newspaper circulating in the district.

A notice substantially in the following form shall be published with the statement of the result of the election:

"No right of action or defense founded upon the invalidity of the above-mentioned election shall be asserted, nor shall the validity of such election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of this statement.

....

Secretary"

Any action or proceeding in any court to set aside an election on the issuance of bonds of a district or to obtain any other relief upon the ground that such election or any proceeding or action taken with respect to the holding of such election are invalid, must be commenced within 30 days after the publication of the statement of the result of the election. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the election shall be asserted nor shall the validity be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

If at such election a majority of the qualified voters who vote thereon shall vote in favor of the issuance of such bonds, such bonds may be sold and issued in the manner hereinafter provided. If the issuance of such bonds shall not be approved the district board may, at any time thereafter, cause another election to be held or the same objects and purposes or for any other objects and purposes. (1971, c. 815, s. 12.)

§ **162A-43. Borrowing upon bond anticipation notes; issuance, renewal and retiral of notes.**—At any time after a general obligation bond order has taken effect, a district may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue, and negotiable bond anticipation notes shall be issued for all moneys so borrowed. Such notes shall be payable not later than five years after the time of taking effect of the order authorizing the bonds in anticipation of which such notes are issued. The district board may, in its discretion, retire any such notes by means of current revenues or other funds, in lieu of retiring them by means of bonds. Before the actual retirement of any such notes by any means other than the issuance of bonds, the district board shall amend such order so as to reduce the authorized amount of the bond issue by the amount of the notes to be so retired. Such an amendatory order shall take effect upon its passage and need not be published. Any bond anticipation notes may be renewed from time to time and money may be borrowed upon bond anticipation notes from time to time for the payment of any indebtedness evidenced thereby, but all such notes shall mature not later than five years after the time of taking effect of said order. The issuance of such notes shall be authorized by resolution of the district board which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid thereon. The district board may delegate to any officer thereof the power to fix said face amount and rate of interest within the limitations prescribed by said resolution. Any such notes shall be executed in the manner herein provided for the execution of bonds. (1971, c. 815, s. 13.)

§ **162A-44. Full faith and credit pledged for payment of bonds and notes; ad valorem tax authorized.**—The full faith and credit of the district shall be deemed to be pledged for the punctual payment of the principal of and the interest on every general obligation bond and note issued under the provisions of this Article. There shall be annually levied and collected a tax ad valorem upon all the taxable property in the district sufficient to pay the interest on and the principal of all such general obligation bonds as such interest and principal become due; provided, however, that such tax may be reduced by the amount of other moneys actually available for such purpose. There may also be levied and collected in any year a tax ad valorem upon all the taxable property in the district (which tax shall not be subject to any limitation as to rate or amount contained in any other law) for the purpose of paying all or any part of the cost of maintaining, repairing and operating a water or sewerage system, or both. (1971, c. 815, s. 14.)

§ **162A-45. Determination of tax rate by district board; levy and collection of tax; remittance and deposit of funds.**—After each assessment for taxes following the creation of the district, the board of commissioners shall file with the district board the valuation of assessable property within the district. The district board shall then determine the amount of funds to be raised by taxation for the ensuing year in excess of available funds to provide for the payment of the interest on and the principal of all outstanding general obligation bonds as the same shall become due and payable, to pay the cost of maintaining, repairing and operating any water system or sewerage system or both, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions.

The district board shall determine the number of cents per one hundred dollars ($100.00) necessary to raise said amount and certify such rate to the board of commissioners. The board of commissioners in its next annual levy shall include the number of cents per one hundred dollars ($100.00) certified by the district board in the levy against all taxable property within the district, which tax shall be collected as other county taxes are collected, and every month the amount of tax so collected shall be remitted to the district board and deposited by the district board in a separate account in a bank in the State of North Carolina. Such levy may include an amount for reimbursing the county for the additional cost to the county of levying and collecting such taxes, pursuant to such formula as may be agreed upon by the district board and the board of commissioners, to be deducted from the collections and stated with each remittance to the district board. The officer or officers having charge or custody of the funds of the district shall require said bank to furnish security for protection of such deposits as provided in G.S. 159-28. (1971, c. 815, s. 15.)

§ 162A-46. Covenants securing revenue bonds; rights of holders.—Any resolution or resolutions authorizing the issuance of revenue bonds under this Article to finance all or any part of the cost of any water or sewerage system or both, or any trust agreement or agreements securing any such revenue bonds, may contain covenants as to:

(1) The rents, rates, fees and other charges for the use of or for the services and facilities furnished by the water or sewerage system or both;
(2) The use and disposition of the revenues of the water system or sewerage system or both;
(3) The creation and maintenance of reserves or sinking funds and the regulation, use and disposition thereof;
(4) The purpose or purposes to which the proceeds of the sale of said bonds may be applied, and the use and disposition of such proceeds;
(5) Events of default and the rights and liabilities arising thereupon, the terms and condition upon which revenue bonds issued under this Article shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;
(6) The issuance of other or additional bonds or instruments payable from or charged against all or part of the revenue of a water system or sewerage system or both;
(7) Any insurance to be carried on a water system or sewerage system or both and the use and disposition of any insurance moneys;
(8) Books of account and the inspection and audit thereof;
(9) Limitations or restrictions as to the leasing or other disposition of any water system or sewerage system or both while any of the revenue bonds or interest thereon remain outstanding and unpaid; and
(10) The continuous operation and maintenance of a water system or sewerage system or both.

Revenue bonds issued under this Article and payable solely from revenues of a water system or sewerage system or both shall not be payable from or charged upon any funds of the district other than such revenues, nor shall the district be subject to any pecuniary liability thereon. No holder or holders of any such revenue bonds shall ever have the right to compel any exercise of the taxing power to pay any such revenue bonds or the interest thereon, or to enforce payment thereof against any property of the district other than the revenues so pledged. (1971, c. 815, s. 16.)

§ 162A-47. Form and execution of bonds; terms and conditions; use of proceeds; interim receipts or temporary bonds; replacement of lost, etc., bonds; consent for issuance.—All bonds issued under the provisions of this Article shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates and shall bear interest at such rate or rates, all as may be determined by the district board, and may be made redeemable before maturity, at the option of the district board, at such price or prices and under such terms and conditions as may be fixed by the district board prior to the issuance of the bonds. The district board shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such person as at the actual time of the execution of such bond shall be duly authorized to sign such bond although at the date of such bond such person may not have been such officer. Notwithstanding any other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds shall be issued in coupon form, and provisions may be made by the district board for the registration of any bonds as to principal alone.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the district board may provide in the resolution authorizing the issuance of such bonds or in any trust agreement securing any revenue bonds.

Prior to the preparation of definitive bonds, the district board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery, except that such interim receipts or temporary bonds shall be approved by the Local Government Commission in the same manner as the definitive bonds are approved by the Local Government Commission under the provisions of this Article. Delivery of interim receipts or temporary bonds or of the bonds authorized pursuant to this Article to the purchaser or order, or delivery of definitive bonds in exchange for interim receipts or temporary bonds, shall be made in the same manner as municipal bonds may be delivered under the provisions of the Local Government Act. The district board may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

Excepting the requirement herein that approval of the Local Government Commission shall be obtained, bonds and bond anticipation notes may be issued under the provisions of this Article without obtaining the consent of any commission, board, bureau or agency of the State or of any political subdivision, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Article. (1971, c. 815, s. 17.)

§ **162A-48. Bonds and notes subject to provisions of Local Government Act; approval and sale.**—All general obligation bonds and bond anticipation notes issued under the provisions of this Article shall be subject to the provisions of the Local Government Act.

All revenue bonds issued under the provisions of this Article shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by said Commission, except that upon the filing with said Commission of a resolution of the district board requesting that its revenue bonds be sold at private sale and without advertisement and upon the approval of such request by said Commission, such bonds may be sold by said Commission at private sale and without advertisement to any purchaser or purchasers thereof, such sale to be for such price as said Commission shall determine to be in the best interests of the district and as shall be approved by the district board. (1971, c. 815, s. 18.)

§ **162A-49. Rates and charges for services.**—The district board may fix, and may revise from time to time, rents, rates, fees and other charges for the use of land for the services furnished or to be furnished by any water system or sewerage system or both. Such rents, rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision. Any such rents, rates, fees and charges pledged to the payment of revenue bonds of the district shall be fixed and revised so that the revenues of the water system or sewerage system or both, together with any other available funds, shall be sufficient at all times to pay the cost of maintaining, repairing and operating the water system or the sewerage system or both, the revenues of which are pledged to the payment of such revenue bonds, including reserves for such purposes, and to pay the interest on and the principal of such revenue bonds as the same shall become due and payable and to provide reserves therefor. If any such rents, rates, fees and charges are pledged to the payment of any general obligation bonds issued under this Article, such rents, rates, fees and charges shall be fixed and revised so as to comply with the requirements of such pledge. The district board may provide methods for collection of such rents, rates, fees and charges and measures for enforcement of collection thereof, including penalties and the denial or discontinuance of service. (1971, c. 815, s. 19.)

§ **162A-50. Pledges of revenues; lien.**—All pledges of revenues under the provisions of this Article shall be valid and binding from the time when such pledge is made. All such revenues so pledged and thereafter received by the district board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further action, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the district, irrespective of whether such parties have notice thereof. (1971, c. 815, s. 20.)

§ **162A-51. Bondholder's remedies.**—Any holder of general obligation or revenue bonds issued under the provisions of this Article or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by the resolution authorizing the issuance of such bonds or by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce and compel the performance of all duties required by this Article or by such resolution or trust agreement to be performed by the district board or by any officer thereof, including the fixing, charging and collection of rents, rates, fees and charges for the use of or for the services and facilities furnished by the water system or sewerage system or both. (1971, c. 815, s. 21.)

§ **162A-52. Refunding bonds.**—A district is hereby authorized to issue from time to time general obligation refunding bonds or revenue refunding bonds for the purpose of refunding any general obligation bonds or revenue bonds or bonds representing bonded indebtedness assumed by the district under the provisions of this Article or any or all of such bonds then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the district board, for the additional purpose of paying all or any part of the cost of a water system or sewerage system or both. The provisions of this Article relating to general obligation bonds shall control as to any general obligation bonds issued under the provisions of this section, insofar as such provisions may be applicable, except that an order authorizing general obligation bonds under the provisions of this section for the sole purpose of refunding any general obligation bonds of the district or any bonds representing bonded indebtedness assumed by the district shall become effective upon its passage and need not be submitted to the voters, and the provisions of this Article relating to revenue bonds shall control as to any revenue bonds issued under the provisions of this section insofar as the same may be applicable. (1971, c. 815, s. 22.)

§ 162A-53. Authority of governing bodies of political subdivisions.—The governing body of any political subdivision is hereby authorized and empowered:

(1) Subject to the approval of the Local Government Commission, to transfer jurisdiction over, and to lease, lend, sell, grant or convey to a district, upon such terms and conditions as the governing body of such political subdivision may agree upon with the district board, the whole or any part of any water system or sewerage system or both, and such real or personal property as may be necessary or useful in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or operation of any new water system or sewerage system or both by the district, including public roads and other property already devoted to public use;

(2) To make and enter into contracts or agreements with a district, upon such terms and conditions and for such periods as such governing body and the district board may determine:

  a. For the collection, treatment or disposal of sewage;

  b. For the collecting by such political subdivision or by the district of rents, rates, fees or charges for the services and facilities provided to or for such political subdivision or its inhabitants by any water system or sewerage system or both and for the enforcement of collection of such rents, rates, fees and charges; and

  c. For the imposition of penalties, including the shutting off of the supply of water furnished by any water system owned or operated by such political subdivision, in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any such rents, rates, fees or charges;

  d. For the supply of raw or treated water on a regular retail or wholesale basis;

  e. For the supply of raw or treated water on a standby wholesale basis;

  f. For the construction of jointly financed facilities whose title shall be vested in the district.

(3) To fix, and revise from time to time, rents, rates, fees and other charges for the services furnished or to be furnished by a water system or sewerage system or both under any contract between the district and such political subdivision, and to pledge all or any part of the proceeds of such rents, rates, fees and charges to the payment of any obligation of such political subdivision to the district under such contract;

(4) To pay any obligation of such political subdivision to the district under such contract from any available funds of the political subdivision and to levy and collect a tax ad valorem for the making of any such payment; and

(5) In its discretion or if required by law, to submit to its qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the district under the provisions of this Article.

Any such election upon a contract or agreement, may, at the discretion of the governing body, be called and held under the election laws applicable to the issuance of bonds by such political subdivision. (1971, c. 815, s. 23.)

§ **162A-54. Rights-of-way and easements in streets and highways.**—A right-of-way or easement in, along, or across any State highway system road, or street, and along or across any city or town street within a district is hereby granted to a district in case such right-of-way is found by the district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway system, road, street, or property shall be done in accordance with the rules and regulations and any reasonable requirements of the State Highway Commission, and any work done in, along, or across any municipal street or property shall be done in accordance with any reasonable requirements of the municipal governing body. (1971, c. 815, s. 24.)

§ **162A-55. Submission of preliminary plans to planning groups; cooperation with planning agencies.**—Prior to the time final plans are made for the location and construction of any water system or sewerage system, or both, the district board shall present preliminary plans for such improvement to the county, municipal or regional planning board for their consideration, if such facility is to be located within the planning jurisdiction of any such county, municipal or regional planning group. The district board shall make every effort to cooperate with the planning agency, if any, in the location and construction of a proposed facility authorized under this Article. The district board created under the authority of this Article is hereby directed, wherever possible, to coordinate its plans for the construction of a water system or sewerage system or both, with the overall plans for the development of the planning area, if such district is located wholly or in part within a county, municipal or regional planning area; provided, however, that the approval of any such county, municipal or regional planning board as to any such plan of the district shall not be required. (1971, c. 815, s. 25.)

§ **162A-56. Advances by political subdivisions for preliminary expenses of districts.**—Any political subdivision is hereby authorized to make advances, from any moneys that may be available for such purpose, in connection with the creation of such district and to provide for the preliminary expenses of such district. Any such advances may be repaid to such political subdivision from the proceeds of bonds issued by said district or from other available funds of said district. (1971, c. 815, s. 26.)

§ **162A-57. Article regarded as supplemental.**—This Article shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds except as herein provided. (1971, c. 815, s. 27.)

§ **162A-58. Inconsistent laws declared inapplicable.**—All general, special or local laws, or parts thereof inconsistent herewith are hereby declared to be inapplicable, unless otherwise specified, to the provisions of this Article. It is specifically provided that Chapter 399 of the 1933 Public-Local and Private Laws of North Carolina shall not be applicable to any metropolitan water district created pursuant to the provisions of this Article. (1971, c. 815, s. 28.)

Chapter 163.

Elections and Election Laws.

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Revision of Chapter.—Section 1, c. 775, Session Laws 1967, revised and rewrote c. 163 of the General Statutes, replacing former §§ 163-1 to 163-210 with present §§ 163-1 to 163-278. Where present provisions are similar to prior statutory provisions, the historical citations from the former sections have been added to the new sections, and annotations to cases decided under the chapter prior to its revision have, where it is thought that they are still of value, been placed under appropriate sections of the revised chapter.

Section 2, c. 775, Session Laws 1967, provides: "All laws and clauses of laws, except local and special acts relating to primaries and elections, in conflict with this act are hereby repealed."

SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

Article 1.

Time of Primaries and Elections.

§ 163-1. Time of regular elections and primaries.—(a) Unless otherwise provided by law, elections for the offices listed in the tabulation contained in this section shall be conducted in all election precincts of the territorial units specified in the column headed "Jurisdiction" on the dates indicated in the column headed "Date of Election." Unless otherwise provided by law, officers shall serve for the terms specified in the column headed "Term of Office."

(b) On the first Saturday in May preceding each general election to be held in November for the offices referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices.

(c) On Tuesday next after the first Monday in November in the year 1968, and every four years thereafter, or on such days as the Congress of the United States shall direct, an election shall be held in all of the election precincts of the State for the election of electors of President and Vice-President of the United States. The number of electors to be chosen shall be equal to the number of Senators and Representatives in Congress to which this State may be entitled. Presidential electors shall not be nominated by primary election; instead, they shall be nominated in a State convention of each political party as defined in § 163-96 unless otherwise provided by the plan of organization of the political party. One presidential elector shall be nominated from each congressional district and two from the State-at-large.

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Lieutenant Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years. from first day of January next after election
Secretary of State	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Auditor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Treasurer	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Superintendent of Public Instruction	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years. from first day of January next after election
Attorney General	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Agriculture	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Labor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years. from first day of January next after election

Commissioner of Insurance	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms last for four years	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years. from first day of January next after election
All other State officers whose terms are not specified by law	State	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from first day of January next after election
State Senator	Senatorial district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Member of State House of Representatives	Representative district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Justices and Judges of the Appellate Division	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years. from first day of January next after election
Judges of the superior courts	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years. from first day of January next after election
Judges of the district courts	District court district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years. from the first Monday in December next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Solicitors	Solicitorial district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from first day of January next after election
Members of House of Representatives of the Congress of the United States	Congressional district. except as modified by § 163-104	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
United States Senators	State	At the regular election immediately preceding the termination of each regular term	Six years
County commissioners	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Two years, from the first Monday in December next after election
Clerk of superior court	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Register of deeds	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Sheriff	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Coroner	County	At the regular election for members of the General Assembly immediately preceding the termination of a regular term	Four years, from the first Monday in December next after election

County treasurer (in counties in which elected)	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
All other county officers to be elected by the people	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
Constable	Township	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
Justice of the peace (in counties in which elected)	Township	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
All other township officers to be elected by the people	Township	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election

(Const., art. 4, s. 24; 1901, c. 89, ss. 1, 2, 3, 4, 73, 74, 77; Rev., ss. 4293, 4294, 4296, 4297, 4298, 4299; 1915, c. 101, s. 1; 1917 c. 218; C. S., ss. 5914, 5915, 5917, 5918, 5919, 5920, 6018; 1935, c. 362; 1939, c. 196; 1943, c. 134, s. 4; 1947, c. 505, s. 1; 1951, c. 1009, s. 2; 1953, c. 1191, s. 1; 1967, c. 775, s. 1; cc. 1264, 1271; 1969, c. 44, s. 80.)

Local Modification to Former §§ 163-118 to 163-147.—Session Laws 1945, c. 894, repealed former article 19, relating to primaries, insofar as its provisions apply to the nomination of democratic candidates for the General Assembly and county offices in Mitchell County.

Session Laws 1957, c. 826, as amended by Session Laws 1959, c. 621, s. 2, provided that the former article should not apply to nominations of Democratic candidates for county offices and members of the House of Representatives in Cherokee County, but such candidates should be nominated by convention of the Democratic Party.

Session Laws 1961, c. 484, provided that the former article should not apply to nominations of Republican candidates for county offices and members of the General Assembly in Cherokee County, but such candidates should be nominated by conventions of the Republican Party.

Session Laws 1953, c. 1069, as amended by Session Laws 1959, c. 238, made the former article applicable to Watauga County. Session Laws 1955, c. 439, to the extent provided, made the former article applicable to Yancey County. Session Laws 1955, c. 442, made the former article applicable to the counties of Avery, Madison, Mitchell and Yancey for the purpose of nominating Democratic candidates for the State Senate.

Session Laws 1971, c. 50, made the provisions of the primary laws as contained in this Chapter applicable to Yancey County, and repealed Session Laws 1955, cc. 439 and 442, insofar as they conflict with the 1971 act.

Local Modification to Former § 163-129.—Avery: 1933, c. 327; 1935, c. 141; 1937, c. 263; Stanly: 1945, c. 958.

Cross References. — As to election of executive officers of the State government, see § 147-4. As to municipal elections, see § 160-29 et seq.

Editor's Note. — The first 1967 amendment deleted "for Governor" under the column headed "Date of Election" as it refers to United States Senators in subsection (c).

The second 1967 amendment substituted "first Saturday" for "last Saturday" near the beginning of subsection (b).

The 1969 amendment substituted "Justices and Judges of the Appellate Division" for "Justices of the Supreme Court" in the column headed "Office" in the tabulation in subsection (c).

Amendment Effective July 1, 1973.—Session Laws 1971, c. 170, will substitute "On Tuesday next after the first Monday in May" for "On the first Saturday in May" at the beginning of subsection (b). Session Laws 1971, c. 1241, s. 1, provides that Session Laws 1971, c. 170, will be effective July 1, 1973.

For case law survey on elections, see 41 N.C.L. Rev. 433 (1963).

Creation of New Township — Election upon Reasonable Notice. — Under an earlier statute it was held that, where the legislature had created a new township and the time for election had passed, as the public good required the offices to be immediately filled, the commissioners could order an election upon reasonable notice. Grady v. County Comm'rs, 74 N.C. 101 (1876).

§ 163-2. Hours of primaries and elections. — In all primaries, general elections, special elections, and referenda held in this State, including those held in and for municipalities, the polls shall be open at 6:30 A.M., and shall be closed at 7:30 P.M.: Provided, however, that at voting places at which voting machines are used the responsible county board of elections may permit the polls to remain open until 8:30 P.M. (1929, c. 164, s. 33; 1937, cc. 258, 457; 1941, c. 222; 1955, c. 1064; 1967, c. 775, s. 1; 1971, c. 416; c. 1093, s. 18.1.)

Editor's Note. — The first 1971 amendment, effective Oct. 1, 1971, substituted "open" for "opened" preceding the proviso, substituted "7:30" for "6:30," and substituted "remain open until at 8.30 P.M." for "be closed at 7:30 P.M."

The second 1971 amendment deleted "at" preceding "8:30 P.M."

§§ 163-3 to 163-7: Reserved for future codification purposes.

ARTICLE 2.

Time of Elections to Fill Vacancies.

§ 163-8. Filling vacancies in State executive offices.—If the office of Governor or Lieutenant Governor shall become vacant, the provisions of § 147-11.1 shall apply. If the office of any of the following officers shall be vacated by death, resignation, or otherwise than by expiration of term, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. Each such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 30 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired four-year term: Provided, that when a vacancy occurs in any of the offices named in this section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an acting officer to perform the duties of that office until a person is appointed or elected pursuant to this section and § 13, article III, of the State Constitution, to fill the vacancy and is qualified. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C. S., s. 5920; 1967, c. 775, s. 1.)

Editor's Note. — The reference in the second paragraph is to Art. III, § 13, Const. 1868. For present provisions, see N.C. Const., Art. III, § 7.

§ 163-9. Filling vacancies in State and district judicial offices. — Vacancies occurring in the offices of Justice of the Supreme Court, judge of the Court of Appeals, and judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee shall hold his place until the next election for members of the General Assembly that is held more than 30 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office: Provided, that when the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Instead, such a vacancy shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district in which the vacancy occurs. If the district bar fails to submit nominations within two weeks from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C. S., s. 5920; 1967, c. 775, s. 1; 1969, c. 44, s. 81.)

Editor's Note.—The 1969 amendment inserted "judge of the Court of Appeals" in the first sentence.

§ 163-10. Filling vacancy in office of solicitor.—Any vacancy occurring in the office of solicitor for causes other than expiration of term shall be filled by appointment of the Governor. An appointee shall hold his place until the next election for members of the General Assembly that is held more than 30 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office: Provided, that when the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C. S., s. 5920; 1967, c. 775, s. 1.)

§ 163-11. Filling vacancies in the General Assembly.—If a vacancy shall occur in the General Assembly by death, resignation, or otherwise than by expiration of term, the Governor shall immediately appoint for the unexpired part of the term the person recommended by the county executive committee of the political party with which the vacating member was affiliated when elected, it being the party executive committee of the county in which he was resident. (1901, c. 89,

s. 74; Rev., s. 4298; C. S., s. 5919; 1947, c. 505, s. 1; 1953, c. 1191, s. 1; 1967, c. 775, s. 1.)

§ **163-12. Filling vacancy in United States Senate.**—Whenever there shall be a vacancy in the office of United States Senator from this State, whether caused by death, resignation, or otherwise than by expiration of term, the Governor shall appoint to fill the vacancy until an election shall be held to fill the office. The Governor shall issue his writ for the election of a Senator to be held at the time of the first election for members of the General Assembly that is held more than 30 days after the vacancy occurs. The person elected shall hold the office for the remainder of the unexpired term. The election shall take effect from the date of the canvassing of the returns. (1913, c. 114, ss. 1, 2; C. S., ss. 6002, 6003; 1929, c. 12, s. 2; 1955, c. 871, s. 6; 1967, c. 775 s. 1.)

§ **163-13. Filling vacancy in United States House of Representatives.**—(a) Special Election.—If at any time after expiration of any Congress and before another election, or if at any time after an election, there shall be a vacancy in this State's representation in the House of Representatives of the United States Congress, the Governor shall issue a writ of election, and by proclamation fix the date on which an election to fill the vacancy shall be held in the appropriate congressional district.

(b) Nominating Procedures.—If a congressional vacancy occurs within eight months preceding the next succeeding general election, candidates for the special election to fill the vacancy shall not be nominated in primaries. Instead, nominations may be made by the political party congressional district executive committees in the district in which the vacancy occurs. The chairman and secretary of each political party congressional district executive committee nominating a candidate shall immediately certify his name and party affiliation to the State Board of Elections so that it may be printed on the special election ballots.

If the congressional vacancy occurs more than eight months prior to the next succeeding general election, the Governor shall call a special primary for the purpose of nominating candidates to be voted on in a special election called by the Governor in accordance with the provisions of subsection (a) of this section. Such a primary election shall be conducted in accordance with the general laws governing primaries, except that the closing date for filing notices of candidacy with the State Board of Elections shall be fixed by the Governor in his call for the special primary. (1901, c. 89, s. 60; Rev., s. 4369; C. S., s. 6007; 1947, c. 505, s. 5; 1967, c. 775, s. 1.)

§§ **163-14 to 163-18:** Reserved for future codification purposes.

SUBCHAPTER II. ELECTION OFFICERS.

Article 3.

State Board of Elections.

§ **163-19. State Board of Elections; appointment; term of office; vacancies; oath of office.**—All of the terms of office of the present members of the State Board of Elections shall expire on May 1, 1969, or when their successors in office are appointed and qualified.

The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 1969, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of this Board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of the Board shall be members of the same political party.

Any vacancy occurring in the Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term.

At the first meeting held after new appointments are made, the members of the State Board of Elections shall take the following oath:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, and that I will well and truly execute the duties of the office of member of the State Board of Elections according to the best of my knowledge and ability, according to law, so help me, God."

After taking the prescribed oath, the Board shall organize by electing one of its members chairman and another secretary. (1901, c. 89, ss. 5, 7; Rev., ss. 2760, 4300, 4301; C. S., ss. 5921, 5922; 1933, c. 165, s. 1; 1953, c. 428; 1967, c. 775, s. 1.)

State Government Reorganization.—The State Board of Elections was transferred to the Department of the Secretary of State by § 143A-22, enacted by Session Laws 1971, c. 864.

§ **163-20. Meetings of Board; quorum; minutes.** — The State Board of Elections shall meet at the call of the chairman whenever necessary to discharge the duties and functions imposed upon it by this chapter. The Board shall meet at such times and places in the city of Raleigh as the chairman may appoint unless required to meet elsewhere under the provisions of § 163-23.

The chairman of the State Board of Elections shall call a meeting of the Board upon the application in writing of any two members thereof. If there be no chairman, or if the chairman does not call a meeting after receiving a written request from two members, any three members of the Board shall have power to call a meeting of the Board, and any duties imposed or powers conferred by this chapter may be performed or exercised at that meeting, although the time for performing or exercising the same prescribed by this chapter may have expired.

A majority of the members shall constitute a quorum for the transaction of Board business. If at any meeting any member of the Board shall fail to attend, and by reason thereof there is a failure of a quorum, the members attending shall adjourn from day to day for not more than three days, at the end of which time, if there should be no quorum, the Governor may remove the members failing to attend summarily and appoint their successors.

The State Board of Elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the office of the Board in Raleigh. (1901, c. 89, s. 7; Rev., ss. 2760, 4301, 4302; C. S., ss. 5922, 5923; 1933, c. 165, s. 1; 1945, c. 982; 1967, c. 775, s. 1.)

Editor's Note.—

Section 3, c. 1241, Session Laws 1971, provides:

"Sec. 3. During the period from January 1, 1972, through July 1, 1973, the State Board of Election is authorized to and shall set the dates on which the State Board of Elections is required to meet and appoint members of the county boards of elections and set the filing deadline. The State Board of Elections shall set the date on which the county boards of elections are required to meet and appoint precinct officials, and the date on which such officials shall take the oath of office, notwithstanding any provisions of Chapter 163 to the contrary."

§ **163-21. Compensation of Board members.**—The members of the State Board of Elections shall be compensated for the time they are actually engaged in the discharge of their duties and for their traveling and other expenses necessary and incidental to the discharge of their duties in accordance with the provisions of Chapter 138 of the General Statutes. (1901, c. 89, s. 7; Rev., ss. 2760, 4301; C. S., s. 5922; 1933, c. 165, s. 1; 1967, c. 775, s. 1.)

§ **163-22. Powers and duties of State Board of Elections.**—(a) The State Board of Elections shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.

(b) From time to time, the Board shall publish and furnish to the county boards of elections and other election officials a sufficient number of indexed copies of all election laws and Board rules and regulations then in force. It shall also publish, issue, and distribute to the electorate such materials, explanatory of primary and election laws and procedures as the Board shall deem necessary.

(c) The State Board of Elections shall appoint, in the manner provided by law, all members of the county boards of elections and advise them as to the proper methods of conducting primaries and elections. The Board shall require such reports from the county boards and election officers as are provided by law, or as are deemed necessary by the Board, and shall compel observance of the requirements of the election laws by county boards of elections and other election officers. In performing these duties, the Board shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county board of elections to comply with any part of the election laws imposing duties upon such a board. The State Board of Elections shall have power to remove from office any member of a county board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county board member affected and give him an opportunity to be heard. When any county board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the State Board of Elections.

(d) The State Board of Elections shall investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county, and shall report violations of the election laws to the Attorney General or solicitor or prosecutor of the district for further investigation and prosecution.

(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, poll books, tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections The Board shall furnish to the county boards of elections registration and poll books, cards, blank forms, instruction sheets, and forms necessary for the registration of voters and for holding primaries and elections in the counties. In the preparation and distribution of ballots, poll books, abstract and return forms, and all other forms, the State Board of Elections shall call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots. and forms.

(f) The State Board of Elections shall prepare, print, and distribute to the county boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties. The Board shall instruct the county boards of elections as to the printing of county and local ballots.

(g) The State Board of Elections shall certify to the appropriate county boards of elections the names of candidates for district offices who have filed notice of candidacy with the Board and whose names are required to be printed on county ballots.

(h) It shall be the duty of the State Board of Elections to tabulate the primary and election returns, to declare the results, and to prepare abstracts of the votes cast in each county in the State for offices which, according to law, shall be tabulated by the Board.

(i) The State Board of Elections shall make recommendations to the Governor and legislature relative to the conduct and administration of the primaries and elections in the State as it may deem advisable. (1901, c. 89, ss 7, 11; Rev., ss. 4302, 4305; 1913, c. 138; C. S., ss. 5923, 5926; 1921, c. 181 s. 1; 1923, c. 196; 1933, c. 165, ss. 1, 2; 1945, c. 982; 1953, c. 410, s. 2; 1967, c. 775, s. 1.)

Supervisory and Other Powers. — The State Board of Elections has general supervision over the primaries and elections in the State, with authority to promulgate legally consistent rules and regulations for their conduct, and to compel the observance of the election laws by county boards of elections, and the duty of the State Board to canvass the returns and declare the count, does not affect its supervisory power, which perforce must be exercised prior to the final acceptance of the returns made by the county boards. Burgin v. North Carolina State Bd. of Elections, 214 N.C. 140, 198 S.E. 592 (1938).

The General Assembly has given the State Board of Elections power to supervise primaries and general elections to the end that, insofar as possible, the results in primary and general elections in this State will not be influenced or tainted with fraud, corruption or other illegal conduct on the part of election officials or others. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

The General Assembly has given broad supervisory powers to the State Board of Elections. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Board May Make Rules and Regulations Not in Conflict with Law.—The General Assembly has conferred upon the State Board of Elections power to make reasonable rules and regulations for carrying into effect the law it was created to administer, but has annexed to the grant of this power the express limitation that such rules and regulations must not conflict with any provisions of such law. It seems clear that this specific restriction would have been inseparably wedded to the authority granted even if the statutes had been silent with respect to it. This is true because the Constitution forbids the legislature to delegate the power to make law to any other body. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Investigation of Frauds Is Not Limited to Reporting Them for Further Investigation. — The Supreme Court did not construe subdivision (11) of former § 163-10 (subsection (d) of this section) to limit the authority of the State Board of Elections merely to an investigation of alleged "frauds and irregularities in elections in any county," for the sole purpose of making a report of such frauds and irregularities to the Attorney General or solicitor for further investigation and prosecution. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

And State Board May Direct County Board to Amend Returns. — The State Board of Elections is a quasi-judicial agency and may, in a primary or election in a multiple county district, investigate alleged frauds and irregularities in elections in any county upon appeal from a county board or upon a protest filed in apt time with the State Board of Elections, and may take such action as the findings of fact may justify, and may direct a county board of elections to amend its returns in accordance therewith. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Stated in Clayton v. North Carolina State Bd. of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).

§ 163-23. Powers of chairman in execution of Board duties.—In the performance of the duties enumerated in § 163-22, the chairman of the State Board of Elections shall have power to administer oaths, issue subpoenas, summon witnesses, compel the production of papers, books, records and other evidence. He shall also have power to fix the time and place for hearing any matter relating to the administration and enforcement of the election laws: Provided, however, the place of hearing shall be the county in which the irregularities are alleged to have been committed. (1901, c. 89, s. 7; Rev., s. 4302; C. S., s. 5923; 1933, c. 165, s. 1; 1945, c. 982; 1967, c. 775, s. 1.)

§ 163-24. Power of State Board of Elections to maintain order.—The State Board of Elections shall possess full power and authority to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of the State Board of Elections or its chairman, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff or constable to whom the same shall be delivered, or if a sheriff or constable shall not be present, or shall refuse to act, by any other person who shall be deputed by the State Board of Elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the clerk of the superior court and appear to the superior court for a trial on the merits of his commitment. (1901, c. 89, s. 72; Rev., s. 4376; C. S., s. 5977, 1955, c. 871, s. 4; 1967, c. 775, s. 1.)

§ **163-25. Authority of State Board to assist in litigation.**—The State Board of Elections shall possess authority to assist any county board of elections in any matter in which litigation is contemplated or has been initiated, provided, the county board of elections in such county petitions, by majority resolution, for such assistance from the State Board of Elections and, provided further, that the State Board of Elections determines, in its sole discretion by majority vote, to assist in any such matter. It is further stipulated that the State Board of Elections shall not be authorized under this provision to enter into any litigation in assistance to counties, except in those instances where the uniform administration of chapter 163 of the General Statutes of North Carolina has been, or would be threatened.

The Attorney General shall provide the State Board of Elections with legal assistance in execution of its authority under this section or, in his discretion, recommend that private counsel be employed. (1969, c. 408, s. 1.)

Editor's Note.—Section 2, c. 408, Session Laws 1969, provides: "Any and all local acts which might be in conflict with this section shall be exempt from the provisions hereof."

§§ **163-26 to 163-29**: Reserved for future codification purposes.

ARTICLE 4.

County Boards of Elections.

§ **163-30. County boards of elections; appointments; term of office; qualifications; vacancies; oath of office.**—In every county of the State there shall be a county board of elections to consist of three persons of good moral character, who are registered voters in the county in which they are to act. Members of county boards of elections shall be appointed by the State Board of Elections on the Friday before the tenth Saturday preceding each primary election, and their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party.

No person shall serve as a member of the county board of elections who holds any elective public office or who is a candidate for any office in the primary or election.

No person, while acting as a member of a county board of elections, shall serve as a county campaign manager of any candidate in a primary or election.

The State chairman of each political party shall have the right to recommend to the State Board of Elections three registered voters in each county for appointment to the board of elections for that county. If such recommendations are received by the Board fifteen or more days before the tenth Saturday before the primary is to be held, it shall be the duty of the State Board of Elections to appoint the county boards from the names thus recommended.

Whenever a vacancy occurs in the membership of a county board of elections for any cause other than removal by the State Board of Elections, the State chairman of the political party of the vacating member shall have the right to recommend two registered voters of the affected county for such office, and it shall be the duty of the State Board of Elections to fill the vacancy from the names thus recommended.

At the meeting of the county board of elections required by § 163-31 to be held on the Monday following the ninth Saturday before the primary, the members shall take the following oath of office:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the .... county board of elections to the best of my knowledge and ability, according to law; so help me, God." (1901, c. 89, ss. 6, 11; Rev., ss. 4303, 4304, 4305; 1913, c. 138; C. S., ss. 5924, 5925, 5926; 1921, c. 181, s. 1; 1923, c. 111, s. 1; c. 196; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, ss. 1, 2; 1949, c. 672, s. 1; 1953, c. 410, ss. 1, 2; c. 1191, s. 2; 1955, c. 871, s. 1; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1967, c. 775, s. 1; 1969, c. 208, s. 1.)

Editor's Note. — The 1969 amendment substituted "Monday following the ninth Saturday" for "ninth Saturday" near the beginning of the sixth paragraph.

Section 3, c. 1241, Session Laws 1971, provides:

"Sec. 3. During the period from January 1, 1972, through July 1, 1973, the State Board of Election is authorized to and shall set the dates on which the State Board of Elections is required to meet and appoint members of the county boards of elections and set the filing deadline. The State Board of Elections shall set the date on which the county boards of elections are required to meet and appoint precinct officials, and the date on which such officials shall take oath of office, notwithstanding any provisions of Chapter 163 to the contrary."

§ 163-31. Meetings of county boards of elections; quorum; minutes. —In each county of the State the members of the county board of elections shall meet at the courthouse or board office at noon on the Monday following the ninth Saturday before each primary election and, after taking the oath of office provided in § 163-30, they shall organize by electing one member chairman and another member secretary of the county board of elections. On the Monday following the seventh Saturday before each primary election the county board of elections shall meet and appoint precinct registrars and judges of elections. The board may hold other meetings at such times and places as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of board business.

The county board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office if there be one, otherwise, the minute book shall remain in the custody of the secretary of the board. (1901, c. 89, s. 11; Rev., ss. 4304, 4306; C. S., ss. 5925, 5927; 1921, c. 181, s. 2; 1923, c. 111, s. 1; 1927, c. 260, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1; c. 1191, s. 2; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1966, Ex. Sess., c. 5, s. 2; 1967, c. 775, s. 1; 1969, c. 208, s. 2.)

Editor's Note. — The 1969 amendment substituted "Monday following the ninth Saturday" for "ninth Saturday" in the first sentence and "Monday following the seventh Saturday" for "seventh Saturday" in the second sentence of the first paragraph.

§ 163-32. Compensation of members of county boards of elections. —In full compensation for their services, members of the county board of elections (including the chairman) shall be paid by the county fifteen dollars ($15.00) per day for the time they are actually engaged in the discharge of their duties, together with reimbursement for expenditures necessary and incidental to the discharge of their duties. In its discretion, the board of county commissioners of any county may pay the chairman of the county board of elections compensation in addition to the per diem and expense allowance provided in this paragraph.

In all counties the board of elections shall pay its clerk, assistant clerks, and other employees such compensation as it shall fix within budget appropriations. Counties which adopt full-time and permanent registration shall have authority to pay executive secretaries and special registration commissioners whatever compensation they may fix within budget appropriations. (1901, c. 89, s. 11; Rev., s. 4304 C. S., s. 5925; 1923, c. 111, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1; c. 843; c. 1191, s. 2; 1955, c. 800; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 1.)

Local Modification to Former § 163-12. — Hyde, Iredell and Nash: 1941, c. 305, s. 2.

Editor's Note.—The 1971 amendment deleted a former second paragraph.

§ 163-33. Powers and duties of county boards of elections.—The county boards of elections within their respective jurisdictions shall exercise all powers granted to such boards in this chapter, and they shall perform all the duties imposed upon them by law, which shall include the following:

(1) To make and issue such rules, regulations, and instructions, not inconsistent with law or the rules established by the State Board of Elections, as it may deem necessary for the guidance of election officers and voters.

(2) To appoint all registrars, judges, assistants, and other officers of elections, and designate the precinct in which each shall serve; and, after notice and hearing, to remove any registrar, judge of elections, assistant, or other officer of election appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause.

(3) To investigate irregularities, nonperformance of duties, and violations of laws by election officers and other persons, and to report violations to the prosecuting authorities; in connection with any such investigation, to administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence.

(4) As provided in § 163-128, to establish, define, provide, rearrange, discontinue, and combine election precincts as it may deem expedient, and to fix and provide for places of registration and for holding primaries and elections.

(5) To review, examine, and certify the sufficiency and validity of petitions and nomination papers.

(6) To advertise and contract for the printing of ballots and other supplies used in registration and elections: and to provide for the delivery of ballots, poll books, and other required papers and materials to the voting places.

(7) To provide for the purchase, preservation, and maintenance of voting booths, ballot boxes, registration and poll books, maps, flags, cards of instruction, and other forms, papers, and equipment used in registration, nominations, and elections; and to cause the voting places to be suitably provided with voting booths and other supplies required by law.

(8) To provide for the issuance of all notices, advertisements, and publications concerning elections required by law.

(9) To receive the returns of primaries and elections, canvass the returns, make abstracts thereof, transmit such abstracts to the proper authorities, and to issue certificates of election to county officers and members of the General Assembly except those elected in districts composed of more than one county.

(10) To appoint and remove the board's clerk, assistant clerks, and other employees.
(11) To prepare and submit to the proper appropriating officers a budget estimating the cost of elections for the ensuing fiscal year.
(12) To perform such other duties as may be prescribed by this chapter or the rules of the State Board of Elections. (1901, c. 89, s. 11; Rev., s. 4306; C. S., s. 5927; 1921, c. 181, s. 2; 1927, c. 260, s. 1; 1933, c. 165, s. 2; 1966, Ex. Sess., c. 5, s. 2; 1967, c. 775, s. 1.)

Board Must Act as Body. — When the State Board of Elections instructs certain county boards of elections to amend their respective returns in accordance with the State Board's rulings on protests challenging the validity of certain ballots, it is necessary for the county boards to hear the challenges and make the amended returns, acting as a body in a duly assembled legal session, and action taken and amended returns made by two members of the county board of each county, respectively, without notice to the third member, are void as a matter of law. Burgin v. North Carolina State Bd. of Elections, 214 N.C. 140, 198 S.E. 592 (1938).

§ **163-34. Power of county board of elections to maintain order.**—Each county board of elections shall possess full power to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of any county board of elections, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff or constable to whom the same shall be delivered, or if a sheriff or constable shall not be present, or shall refuse to act, by any other person who shall be deputed by the county board of elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment. (1901, c. 89, s. 72; Rev., s. 4376; C. S., s. 5977; 1955, c. 871, s. 4; 1967, c. 775, s. 1.)

§ **163-35. Executive secretary to county board of elections.** — The county board of elections shall have the power, by majority vote, to appoint an executive secretary to serve at the will of the board. No person shall serve as an executive secretary who holds any elective public office or who is a candidate for any office in a primary or election, or who holds an official position with any political party.

The county board of elections shall have authority, by resolution adopted by majority vote, to delegate to its executive secretary so much of the administrative detail of the election functions, duties, and work of the board, its officers and members, as is now, or may hereafter be, vested in it or them as the county board of elections may see fit: Provided, that the board shall not delegate to an executive secretary any of its quasi-judicial or policy-making duties and authority. Within the limitations imposed upon him by the resolution of the county board of elections, the acts of a properly appointed executive secretary shall be deemed to be the acts of the county board of elections, its officers and members. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 2.)

Editor's Note.—The 1971 amendment deleted "In counties which adopt full-time and permanent registration" at the beginning of the first sentence.

§§ **163-36 to 163-40**: Reserved for future codification purposes.

ARTICLE 5.

Precinct Election Officials.

§ 163-41. Precinct registrars and judges of election; special registration commissioners; appointment; terms of office; qualifications; vacancies; oaths of office.—(a) Appointment of Registrar and Judges.—At the meeting required by § 163-31 to be held on the seventh Saturday before each primary election, the county board of elections shall appoint one person to act as registrar and two other persons to act as judges of election for each precinct in the county Their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified It shall be their duty to conduct the primaries and elections within their respective precincts. Persons appointed to these offices must be registered voters and residents of the precinct for which appointed, of good repute, and able to read and write. Not more than one judge in each precinct shall belong to the same political party as the registrar, provided, however, that in a primary election in which only one political party participates all of the precinct officials shall be chosen from that party. For purposes of this section, the second primary provided for in § 163-111 shall be considered part of the first primary and not a separate primary election.

No person holding any office or place of trust or profit under the government of the United States, or of the State of North Carolina, or any political subdivision thereof, shall be eligible to appointment as a precinct election official: Provided, that nothing herein contained shall extend to officers in the militia, notaries public, commissioners of public charities, or commissioners for special purposes.

No person who is a candidate for nomination or election shall be eligible to serve as a registrar or judge of election.

The chairman of each political party in the county shall have the right to recommend from three to five registered voters in each precinct, who are residents of the precinct, and who have good moral character and are able to read and write, for appointment as registrar and judges of election in that precinct. If such recommendations are received by the county board of elections before the seventh Saturday before the primary is to be held, it may make precinct appointments from the names thus recommended, although it shall not be required to do so.

If, at any time other than on the day of a primary or election, a registrar or judge of election shall be removed from office, or shall die or resign, or if for any other cause there be a vacancy in a precinct election office, the chairman of the county board of elections shall appoint another in his place, promptly notifying him of his appointment. In filling such a vacancy, the chairman shall appoint a person who belongs to the same political party as that to which the vacating member belonged when appointed.

If any person appointed registrar shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the precinct judges of election shall appoint another to act as registrar until such time as the chairman of the county board of elections shall appoint to fill the vacancy If a judge of election shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the registrar shall appoint another to act as judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. Persons appointed to fill vacancies shall, whenever possible, be chosen from the same political party as the person whose vacancy is being filled, and all such appointees shall be sworn before acting.

Before entering upon his duties each registrar shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will administer the duties of my office as registrar of .... precinct, ... County, without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition; and that I will not keep or make any memorandum of anything occurring within a voting booth, unless I am called upon to testify in a judicial proceeding for a violation of the election laws of this State; so help me, God."

Before the opening of the polls on the morning of the primary or election, the registrar shall administer the oath set out in the preceding paragraph to each judge of election and assistant, substituting for the word "registrar" the words "judge of elections in" or "assistant in," whichever is appropriate.

(b) Appointment of Special Registration Commissioners. — In counties which adopt full-time and permanent registration the county board of elections may, in addition to registrars, select persons of good repute to act as special registration commissioners. Persons appointed as registration commissioners shall serve for two years, but their authority may be terminated by the county board of elections at any time without cause.

In counties which adopt full-time and permanent registration the chairman of each political party shall have the right to recommend registered voters who are residents of the county for appointment as special registration commissioners. If such recommendations are received by the county board of elections before the seventh Saturday before the primary is to be held, that board may make appointments from the names thus recommended, although it shall not be required to do so.

Before entering upon his duties each special registration commissioner shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; that I will administer the duties of my office as special registration commissioner for .... County without fear or favor, to the best of my knowledge and ability, according to law; so help me, God."

(c) Publication of Names of Precinct Officials. — Immediately after appointing registrars, judges, and special registration commissioners as herein provided, the county board of elections shall publish the names of the persons appointed in some newspaper having general circulation in the county or, in lieu thereof, at the courthouse door, and shall notify each person appointed of his appointment, either by letter or by having a notice served upon him by the sheriff. (1901, c. 89, ss. 8, 9, 16; Rev., ss. 4307, 4308, 4309; C. S ss. 5928, 5929, 5930; 1923, c. 111, s. 2; 1929, c. 164, s. 18; 1933, c. 165, s. 3; 1947, c. 505, s. 2; 1953, c. 843; c. 1191, s. 3; 1955, c. 800; 1957, c. 784, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

Local Modification to Former § 163-15. —Durham: 1937, c. 299.

Editor's Note.—

Section 3, c. 1241, Session Laws 1971, provides:

"Sec. 3. During the period from January 1, 1972, through July 1, 1973, the State Board of Election is authorized to and shall set the dates on which the State Board of Elections is required to meet and appoint members of the county boards of elections and set the filing deadline. The State Board of Elections shall set the date on which the county boards of elections are required to meet and appoint precinct officials, and the date on which such officials shall take the oath of office, notwithstanding any provisions of Chapter 163 to the contrary."

The board of elections had no authority to appoint two registrars from the same party in the same voting precinct. Mullen v. Morrow, 123 N.C. 773, 31 S.E. 1003 (1898).

Appointment of Registrars in Violation of Residence Requirements. — Where neither the regular registrar of a precinct nor the person appointed registrar for one day under former § 163-17 resided in the area in which the special annexation election was held, nevertheless, they were at least de facto registrars during the time they served as such, and in the absence of any evidence that the result of the election was affected thereby, their appointments would be deemed irregularities but insufficient to void the election. McPherson v. City Council, 249 N.C. 569, 107 S.E.2d 147 (1959).

§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.—Within the limits set by this section, the county board of elections shall have authority to appoint an assistant or assistants for each precinct within the county to aid the registrar and judges. Assistants shall, in all cases, be qualified voters of the precinct for which appointed. No other assistants shall be appointed for any precinct. Assistants serve for the primary or election for which appointed and no longer.

No person who is a candidate for nomination or election shall be eligible to serve as an assistant.

In a precinct in which voting machines are not used, the county board of elections may appoint one assistant for each 300 voters registered in that precinct. In a precinct in which voting machines are used, the board may appoint one assistant for each 500 voters registered in that precinct.

Before entering upon the duties of his office, each assistant shall take the oath prescribed in § 163-41 (a) to be administered by the registrar of the precinct for which the assistant is appointed. (1929, c. 164, s. 35; 1933, c. 165, s. 24; 1953, c. 1191, s. 3; 1967, c. 775, s. 1.)

Appointment of Assistants in Each Precinct.—See opinion of Attorney General to Mr. Alex Brock, Executive Secretary, State Board of Elections, 4/20/70.

§ 163-43. Ballot counters; appointment; qualifications; oath of office.—The county board of elections of any county may authorize the use of precinct ballot counters to aid the registrars and judges of election in the counting of ballots in any precinct or precincts within the county. The county board of elections shall appoint the ballot counters it authorizes for each precinct or, in its discretion, the board may delegate authority to make such appointments to the precinct registrar, specifying the number of ballot counters to be appointed for each precinct.

Upon acceptance of appointment, each ballot counter shall appear before the precinct registrar at the voting place immediately at the close of the polls on the day of the primary or election and take the following oath to be administered by the registrar:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will honestly discharge the duties of ballot counter in .... precinct, ... County, for the primary (or election) held this day, and that I will fairly and honestly tabulate the votes cast in said primary (or election); so help me, God." The names and addresses of all ballot counters serving in any precinct, whether appointed by the county board of elections or by the registrar, shall be reported by the registrar to the county board of elections at the county canvass following the primary or election. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

§ 163-44. Markers for general elections; appointment; qualifications; oath of office.—Before each general election, a sufficient number of markers, whose duty it shall be to assist voters in the preparation of their ballots, shall be appointed for each precinct. The appointments shall be made by the county board of elections in consultation with the precinct registrar. In appointing markers, fair representation shall be given to each political party whose candidates appear upon the ballot. To this end, not more than 10 days before any election, the chairman of each political party in the county shall have the right to recommend not fewer than 10 registered voters in each precinct for appointment as markers to represent the party at the election in the precinct. All markers shall be appointed from the names thus recommended.

Persons appointed as markers must be registered voters and residents of the precinct for which appointed, of good moral character, and able to read and write. Elected officers and candidates for elective office shall be ineligible to serve as markers, but all other governmental employees shall be eligible to serve as markers.

Before the opening of the polls on the morning of the election, the registrar shall administer the following oath to each marker:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; that I will administer the duties of my office as marker in .... precinct, ... County, to the best of my knowledge and ability; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition; and that I will not keep or make any memorandum of anything occurring within the voting booth, and will not disclose the same, unless I am called upon to testify in a judicial proceeding for a violation of the election laws of this State; so help me, God."

The provisions of this section shall not apply to primary elections, nor shall they apply to counties which adopt full time and permanent registration. (1929, c. 164, s. 26; 1933, c. 165, s. 24; 1939, c. 352, s. 1; 1953, c. 843; 1955, c. 800, 1959, c. 616, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

§ 163-45. Watchers; appointment.—The chairman of each political party in the county shall have the right to appoint two watchers to attend each voting place at each primary and election: Provided, that in a primary this right shall not extend to the chairman of a political party unless that party is participating in the primary. In any election in which an independent candidate is named on the ballot, he or his campaign manager shall have the right to appoint two watchers for each voting place. Watchers serve also as challengers. Persons appointed as watchers must be registered voters of the precinct for which appointed and must have good moral character. Watchers shall take no oath of office.

Individuals authorized to appoint watchers must submit in writing to the registrar of each precinct a signed list of the watchers appointed for that precinct. The registrar and judges of election for the precinct may for good cause reject any appointee and require that another be appointed.

A watcher shall do no electioneering at the voting place, and he shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting his ballot, but, subject to these restrictions, the registrar and judges of elections shall permit him to make sure observation and take such notes as he may desire. (1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

§ 163-46. Compensation of precinct officials and assistants. — The precinct registrar shall be paid the sum of twenty-five dollars ($25.00) per day for his services on the day of a primary, special or general election. Judges of election shall each be paid the sum of twenty dollars ($20.00) per day for their services on the day of a primary, special or general election. Assistants, appointed pursuant to G.S. 163-42, shall each be paid the sum of fifteen dollars ($15.00) per day for their services on the day of a primary, special or general election.

Registrars shall be paid the sum of twenty dollars ($20.00) per day and judges shall be paid the sum of fifteen [dollars] ($15.00) per day for attendance at the county canvass, pursuant to G.S. 163-173; or for attending the polling place for the purpose of registering voters upon instruction from the chairman of the county board of elections.

The chairman of the county board of elections, along with the executive secretary, shall conduct an instructional meeting prior to each primary and general election which shall be attended by each registrar and judge of election, unless excused by the chairman, and such precinct election officials shall be paid the sum of fifteen dollars ($15.00) for attending the instructional meetings required by this section.

In its discretion, the board of county commissioners of any county may provide funds with which the county board of elections may pay registrars, judges and assistants compensation in addition to the amounts specified in this section. Ballot counters, watchers and markers shall be paid no compensation for their services.

A person appointed to serve as registrar or judge of election when a previously appointed registrar or judge fails to appear at the voting place or leaves his post on the day of an election or primary, shall be paid the same compensation as the registrar or judge appointed prior to that date. (1901, c. 89, s. 42; Rev., s. 4311; C. S., s. 5932; 1927, c. 260, s. 2; 1931, c. 254, s. 16; 1933, c. 165, s. 3; 1935, c. 421, s. 1; 1939, c. 264, s. 1; 1941, c. 304, s. 1; 1945, c. 758, s. 3; 1947, c. 505, s. 11; 1951, c. 1009, s. 1; 1953, c. 843; 1955, c. 800; 1957, c. 182, s. 2; 1963, c. 303, s. 1; 1967, c. 775; s. 1; 1969, c. 24; 1971, c. 604.)

Local Modification.—Richmond: 1969, c. 507.

Local Modification to Former § 163-20.—Beaufort, Chowan, Person: 1941, c. 304, s. 2; Bladen, Wake: 1935, c. 421; Hyde: 1935, c. 421; 1941, c 304, s. 2; Lincoln: 1963, c. 874; Mecklenburg: 1937, c. 382; Watauga: 1939, c. 264.

Editor's Note. — The 1969 amendment increased the compensation of the precinct registrar from $15.00 to $20.00 and that of judges and assistants from $10.00 to $15.00.

The 1971 amendment rewrote this section.

§ 163-47. Powers and duties of registrars and judges of election.—(a) The registrars and judges of election shall conduct the primaries and elections within their respective precincts fairly and impartially, and they shall enforce peace and good order in and about the place of registration and voting.

(b) The registrar shall have in his charge the actual registration of voters within his precinct and shall not delegate this responsibility. On the days required by law, he shall attend the voting place for the registration or new voters and for hearing challenges, but in the performance of these duties the registrar shall be subject to the observance of such reasonable rules and regulations as the county board of elections may prescribe, not inconsistent with law. On the day of an election or primary, the registrar shall have charge of the registration book for the purpose of passing on the registration of persons who presents themselves at the polls to vote.

(c) The registrars and judges shall hear challenges of the right of registered voters to vote as provided by law.

(d) The registrars and judges shall count the votes cast in their precincts and make such returns of the same as is provided by law.

(e) The registrars and judges shall make such an accounting to the chairman of the county board of elections for ballots and for election supplies as is required by law.

(f) The registrar and judges of election shall act by a majority vote on all matters not assigned specifically by law to the registrar or to a judge. (1901, c. 89, s. 41; Rev., s. 4312; C. S., s. 5933; 1933, c. 165, s. 3; 1939, c. 263. s. 3½; 1947, c. 505, s. 3; 1967, c. 775, s. 1.)

Absence of Judges.—It was held under a former statute that in the absence of fraud it is not material to the validity of an election that the persons appointed judges to hold it electioneered, or were absent from their posts at different times during the day. Wilson v. Peterson, 69 N.C. 113 (1873).

§ 163-48. Maintenance of order at place of registration and voting.—The registrar and judges of election shall enforce peace and good order in and about the place of registration and voting. They shall especially keep open and unobstructed the place at which voters or persons seeking to registrar or vote have access to the place of registration and voting. They shall prevent and stop improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting. They shall protect challengers and witnesses against molestation and violence in the performance of their duties, and they may eject from the place of registration or voting any challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult, or disorder.

In the discharge of the duties prescribed in the preceding paragraph of this section, the registrar and judges may call upon the sheriff, the police, or other peace officers to aid them in enforcing the law. They may order the arrest of any person violating any provision of the election laws, but such arrest shall not prevent the person arrested from registering or voting if he is entitled to do so. The sheriff, constables, police officers, and other officers of the peace shall immediately obey and aid in the enforcement of any lawful order made by the precinct election officials in the enforcement of the election laws. The registrar and judges of election of any precinct, or any two of such election officials, shall have the authority to deputize any person or persons as police officers to aid in maintaining order at the place of registration or voting. (1901, c. 89, s. 72; Rev., s. 4376; C. S., s. 5977; 1955, c. 871, s. 4; 1967, c. 775, s. 1.)

§§ 163-49 to 163-53: Reserved for future codification purposes.

SUBCHAPTER III. QUALIFYING TO VOTE.

Article 6.

Qualifications of Voters.

§ 163-54. Registration a prerequisite to voting. — Only such persons as are legally registered shall be entitled to vote in any primary or election held under this chapter. (1901, c. 89, s. 12; Rev., s. 4317, C. S., s. 5938; 1967, c. 775 s. 1.)

Registration Is Necessary and Evidence of Right to Vote.—When duly made registration is prima facie evidence of the right to vote. State ex rel. DeBerry v. Nicholson, 102 N.C. 465, 9 S.E. 545 (1889); State ex rel. Hampton v. Waldrop, 104 N.C. 453, 10 S.E. 694 (1889). The statute requiring registration must be complied with in order to constitute one a qualified voter. Smith v. City of Wilmington, 98 N.C. 343, 4 S.E. 489 (1887); Pace v. Raleigh, 140 N.C. 65, 52 S.E. 277 (1905)

§ 163-55. Qualifications to vote; exclusion from electoral franchise.—Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina for one year and in the precinct in which he offers to register and vote for 30 days next preceding the ensuing election shall, if otherwise qualified as prescribed in this Chapter, be qualified to register and vote in the precinct in which he resides: Provided, that removal from one precinct to another in this State shall not operate to deprive any person of the right to vote in the precinct from which he has removed until 30 days after his removal.

The following classes of persons shall not be allowed to register or vote in this State:

(1) Persons under 18 years of age.
(2) Idiots and lunatics.
(3) Persons who have been convicted, or who have confessed their guilt in open court, upon indictment, of any crime the punishment for which is now or may hereafter be imprisonment in the State's prison, unless he shall have had his rights of citizenship restored in the manner prescribed by law. (19th amendt. U. S. Const.; amendt. State Const., 1920; 1901, c. 89, ss. 14, 15; Rev., ss. 4315, 4316; C. S., ss. 5936, 5937; Ex. Sess. 1920, c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1.)

Cross Reference. — As to restoration of citizenship, see chapter 13.

Editor's Note. — The 1971 amendment substituted "18" for "21" in subdivision (1).

Constitutionality. — The one-year durational residency requirement necessary in order to register to vote in a local North Carolina election is violative of the equal protection clause of the Fourteenth Amendment. Andrews v. Cody, 327 F. Supp. 793 (M.D.N.C. 1971).

The one-year durational residency requirement as it relates to the right to vote in local elections, is unconstitutional and invalid. Andrews v. Cody, 327 F. Supp. 793 (M.D.N.C. 1971).

Change of Voting Qualifications by General Assembly.—The General Assembly cannot in any way change the constitutional qualifications of voters in State, county, township, city or town elections. People v. Canaday, 73 N.C. 198, 21 Am. Rep. 465 (1875).

Qualification for Municipal Suffrage. — Qualifications for voting in a municipal election are the same as in a general election. People v. Canaday, 73 N.C. 198, 21 Am. Rep. 465 (1875); State ex rel. Echerd v. Viele, 164 N.C. 122 80 S.E. 408 (1913); Gower v. Carter, 194 N.C. 293, 139 S.E. 604 (1927).

Conviction of Infamous Crime.—See In re Reid, 119 N.C. 641, 26 S.E. 337 (1896).

Person Imprisoned for Misdemeanor.—See People ex rel. Boyer v. Teague, 106 N.C. 576, 11 S.E. 665 (1890).

Infants and Aliens. — X was under 21 years of age and Y was a citizen of Syria, not of North Carolina, at the time they voted. They were therefore disqualified to vote in an election for mayor. State ex rel. Gower v. Carter, 195 N.C. 697, 143 S.E. 513 (1928).

Stated in Glover v. North Carolina, 301 F. Supp. 364 (E.D.N.C. 1969).

§ 163-56. State residence requirement shortened for presidential elections.—A person who has been a resident of this State for not less than 30 days immediately prior to the date of a presidential election shall be entitled to register and vote for presidential and vice-presidential electors in such election but for no other offices, provided he is then qualified to register and vote in this State except for the fact that he has not resided in this State for one year prior to the election. The procedure by which new resident voters shall register under the provisions of this section is prescribed in G.S. 163-73. (1965, c. 871; 1967, c. 775, s. 1; 1971, c. 1166, s. 3.)

Editor's Note. — The 1971 amendment substituted "30" for "60" near the beginning of the first sentence.

§ 163-57. Residence defined for registration and voting.—All registrars and judges, in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

(1) That place shall be considered the residence of a person in which his

habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.

(3) A person shall not be considered to have gained a residence in any county of this State, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.

(4) If a person removes to another state or county within this State, with the intention of making such state or county his permanent residence, he shall be considered to have lost his residence in the state or county from which he has removed.

(5) If a person removes to another state or county within this State, with the intention of remaining there an indefinite time and making such state or county his place of residence, he shall be considered to have lost his place of residence in this State or the county from which he has removed, notwithstanding he may entertain an intention to return at some future time.

(6) If a person goes into another state or county, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, he shall be considered to have lost his residence in this State or county.

(7) School teachers who remove to a county for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live in the county in which their parents or other relatives reside, and who do not have the intention of becoming residents of the county to which they have moved to teach, for purposes of registration and voting shall be considered residents of the county in which their parents or other relatives reside.

(8) If a person removes to the District of Columbia or other federal territory to engage in the government service, he shall not be considered to have lost his residence in this State during the period of such service unless he votes there, and the place at which he resided at the time of his removal shall be considered and held to be his place of residence.

(9) If a person removes to a county to engage in the service of the State government, he shall not be considered to have lost his residence in the county from which he removed, unless he demonstrates a contrary intention. (19th amendt. U. S. Const.; amendt. State Const., 1920; 1901, c. 89, s. 15; Rev., s. 4316; C. S., s. 5937; Ex. Sess. 1920, c. 18. s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1.)

"Residence" Is Synonymous with Domicile.—Residence as a prerequisite to the right to vote in this State, within the purview of N.C. Const., Art. VI, § 2, is synonymous with domicile, which denotes a permanent dwelling place to which a person, when absent, intends to return. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948). See State ex rel. Hannon v. Grizzard, 89 N.C. 115 (1883).

Meaning of "Residence" Is Judicial Question. — The meaning of the term "residence" for voting purposes, as used in N.C. Const., Art. VI, § 2, is a judicial question. It cannot be made a matter of legislative construction. This is true because the legislature cannot prescribe any qualifications for voters different from those found in the organic law. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948).

The right of teachers in a locality to vote therein is made to depend upon whether they were residents therein only for the scholastic year. A question is incompetent that asks them of their intention to make the locality their legal residence, since the answer involves a question of law as to what constitutes a sufficient legal residence to qualify them to vote. State ex rel. Gower v. Carter, 195 N.C. 697, 143 S.E. 513 (1928).

The indefiniteness of an elector's intention to return to the county of his domicile is insufficient to establish loss of voting residence — no other having been acquired or intended. State ex rel. Owens v. Chaplin, 229 N.C. 797, 48 S.E.2d 37 (1948).

Evidence Insufficient to Show Loss of Domicile. — Uncontroverted testimony which discloses that electors whose votes were challenged on the ground of nonresidence left their homes and moved to another state or to another county in this State for temporary purposes, but that at no time did they intend making the other state or the other county in this State a permanent home, is insufficient to support a finding that they had lost their domicile in the county for the purpose of voting. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948).

Length of Residence and Domicile — Evidence Thereof. — See People ex rel. Boyer v. Teague, 106 N.C. 576, 11 S.E. 665 (1890).

§ 163-58. Literacy.—Only such persons as are able to read and write any section of the Constitution of North Carolina in the English language shall be entitled to register and vote in any primary or election held under this chapter (1901, c. 89, s. 12; Rev., s. 4318; C. S., s. 5939; 1927, c. 260, s. 3, 1957, c. 287, s. 1; 1967, c. 775, s. 1.)

Constitutionality. — The provisions of former § 163-28, similar to this section, were valid, since such qualification is prescribed by the Constitution, Art. VI, § 4, and authority therein granted the legislature by Art. VI, § 3, to enact general legislation to carry out the provisions of the article. Allison v. Sharp, 209 N.C. 477, 184 S.E. 27 (1936).

The provision of former § 163-28 requiring all persons applying for registration to be able to read and write any section of the Constitution as an educational qualification to the right to vote was authorized, and, since it applied alike to all persons who presented themselves for registration to vote, it made no discrimination based on race, creed or color, and therefore did not conflict with the 14th, 15th or 17th Amendments to the Constitution of the United States. Lassiter v. Northampton County Bd. of Elections, 248 N.C. 102, 102 S.E.2d 853 (1958), aff'd, 360 U.S. 45, 79 Sup. Ct. 985, 3 L. Ed. 2d 1072 (1959).

When Literacy Test May Have Effect of Denying Right to Vote. — Use of the literacy test as a prerequisite to registering to vote has the effect of denying or abridging the right to vote on account of race or color where it places an onerous burden on the Negroes for whom a county has maintained separate and inferior schools. Gaston County v. United States, 395 U.S. 285, 89 S. Ct. 1720, 28 L. Ed. 2d 309 (1969).

In an action brought under § 4(a) of the Voting Rights Act of 1965, it is appropriate for a court to consider whether a literacy or educational requirement has the "effect of denying . . . the right to vote on account of race or color" because the state or subdivision which seeks to impose the requirement has maintained separate and inferior schools for its Negro residents who are now of voting age. Gaston County v. United States, 395 U.S. 285, 89 S. Ct. 1720, 28 L. Ed. 2d 309 (1969).

Requirement That Voter Be Able to Read and Write Any Section of Constitution Is Fair.—The requirement, applicable to members of all races, that the prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language" is one fair way of determining whether a person is literate, not a calculated scheme to lay springes for the citizen. It cannot be condemned on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot. Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45, 79 Sup. Ct. 985, 3 L. Ed. 2d 1072 (1959).

Meaning of "Read and Write". — The General Assembly intended the words "read and write" as used in former § 163-28 to have those meanings commonly attributed to them in ordinary usage. In construing that section, the words should be given their ordinary, natural and general meaning. Bazemore v. Bertie County Bd. of Elections, 254 N.C. 398, 119 S.E.2d 637 (1961).

Utmost Proficiency Is Not Contemplated.—The utmost proficiency in reading and writing sections of the Constitution is not contemplated. Perfection is not the measure of qualification. The standard is reasonable proficiency in reading and writing any section of the Constitution in the English language. The occasional misspelling and mispronouncing of more difficult words should not necessarily disqualify. Bazemore v. Bertie County Bd. of Elections, 254 N.C. 398, 119 S.E.2d 637 (1961).

Requiring Writing from Dictation of Another Is Unreasonable. — Under the provisions of former § 163-28 a test of literacy that required an applicant for registration to write a section or sections of the Constitution from the reading and dictation of another, however fairly and clearly the same might be read and dictated, was unreasonable and beyond the clear intent of the statute. Bazemore v. Bertie County Bd. of Elections, 254 N.C. 398, 119 S.E.2d 637 (1961).

Administration of Former Section by Registrar. — The provision of former § 163-28 placing the duty upon the registrar to administer the section was logical and reasonable, and did not constitute class legislation, since its provisions applied to all classes, and there was an adequate remedy at law if a registrar, in bad faith or in abuse of power or discretion, should refuse to register a person duly qualified. Allison v. Sharp, 209 N.C. 477, 184 S.E. 27 (1936).

Challenging Statute in Federal Court.—The question of whether former § 163-28 should be declared void and its enforcement enjoined by a federal court on the ground that it was violative of rights under the federal Constitution would not be considered until plaintiff's administrative remedies had been exhausted and the North Carolina Supreme Court had interpreted the provisions of the section in the light of the North Carolina Constitution. Lassiter v. Taylor, 152 F. Supp. 295 (E.D.N.C. 1957).

§ 163-59. Right to participate or vote in party primary. — No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

(1) Is a registered voter, and
(2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and
(3) Is in good faith a member of that party.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary election, shall be entitled to register while the registration books are open during the regular registration period prior to the primary and then to vote in the primary after being registered. Such an individual may register not earlier than 60 days nor later than 21 days prior to the primary. (1915, c. 101, s. 5; 1917, c. 218; C. S., s. 6027; 1959, c. 1203, s. 6; 1967, c. 775, s. 1; 1971, c. 1166, s. 4.)

Cross Reference.—As to effect of voting in primary on future conduct of voter, see notes to §§ 163-74, 163-87, 163-96.

Editor's Note.—The 1971 amendment deleted "In counties which adopt full-time and permanent registration" at the beginning of the last sentence in the second paragraph.

§§ 163-60 to 163-64: Reserved for future codification purposes.

Article 7.

Registration of Voters.

§ 163-65. Registration books and records.—(a) Precinct Records.—The county board of elections shall furnish each precinct registrar with a proper book or books in which to record registration. This book shall be prepared to contain all of the information pertaining to a registered voter required by § 163-72, including the registrant's political party affiliation, if any. On each page of the book shall be printed a column index giving the first two letters of the surnames and the pages on which persons bearing those names are registered.

In lieu of a bound book, the county boards of elections shall install a loose-leaf registration book system in all of the precincts of the county prior to January 1, 1970; provided that nothing herein shall alter the power of the county board of elections, with the approval of the county board of commissioners, to establish by resolution a full-time system of registration as provided in G.S. 163-67 (b). The necessary binders for the loose-leaf registration book system shall be purchased by each county. The State Board of Elections shall have authority to approve types, sizes and kinds of binders to be used for the loose-leaf registration book system. Uniform registration sheets of paper approved by the State Board of Elections which are necessary for the binders shall be furnished by the State Board of Elections from funds provided by the State from the contingency and emergency fund. One or more duplicate sets of registration sheets shall be maintained by the chairman of the county board of elections at all times in a safe place.

(b) Special Register for Chairman of Board of Elections.—The State Board of Elections shall furnish the chairman of the county board of elections with a book in which he shall register qualified persons prior to the regular registration period under the provisions of § 163-68. This book shall be prepared to contain all the information pertaining to a registered voter required by § 163-72, including the registrant's political party affiliation and also a record of the precinct in which he resides.

(c) Registration Record in County With Full-Time and Permanent Registration or Loose-Leaf Registration Book System.—In counties which adopt full-time and permanent registration or loose-leaf registration book system, the applicant's application to register, when approved by the county board of elections, as provided in § 163-67, shall become an official registration certificate. All original registration certificates shall be kept by the county board of elections in a safe place to be provided by the board of county commissioners. The county board of elections shall place an exact duplicate or copy of each original registration certificate in the proper precinct registration book, and certify each such book as containing the registration certificates of all persons entitled to vote in that precinct. Duplicate registration certificates filed in the precinct registration books, when properly certified by the county board of elections, shall be used in the precincts for purposes of all primaries and elections; provided, however, that the original registration certificates shall at all times be the official and final evidence of registration, and the county board of elections shall have power to correct the duplicates in the precinct registration books to conform to the original registration certificates at any time, including the day of any primary or election. (1939, c. 263, s. 1; 1949, c. 916, s. 1; 1953, c. 843; 1955, c. 800; 1961, c. 381; 1963, c. 303, s. 1; 1967, c. 761, ss. 1, 2; c. 775, s. 1.)

Local Modification.—Ashe: 1969, c. 298; city of Rocky Mount: 1969, c. 1051; town of Arlington: 1969, c. 824.

Local Modification to Former §§ 163-43 and 163-43.1. — Town of Whitakers: 1965, c. 996, s. 1.

Editor's Note. — Session Laws 1967, c. 761, rewrote the last paragraph of subsection (a) and inserted "or loose-leaf registration book system" in the catchline and first sentence of subsection (c).

See Session Laws 1969, c. 171, as to new registration of voters required to be conducted during the period from April 1, 1969, to September 30, 1969, in the following counties: Alleghany, Ashe, Avery, Camden, Carteret, Caswell, Chatham, Cherokee, Clay, Columbus, Dare, Haywood, Macon, Polk, Rutherford, Sampson, Stokes, Watauga, Yancey.

Opinions of Attorney General. — Mr. Alex K. Brock, Executive Secretary, State Board of Elections, 11/10/69.

Loose-leaf Registration Required in Municipality Where Local Act Contains No Provisions Regarding Registration.— See opinion of Attorney General to Mr. Herman Edwards, Murphy Town Attorney, 2/19/70.

§ 163-66. Custody of registration records and poll books; access; obtaining copies.—When not in use for a primary or election, all registration and poll books shall be in the custody and safekeeping of the chairman of the county board of elections. It shall be his duty to keep these books in a safe and secure place where they may not be tampered with, stolen or destroyed. If possible, he shall keep them in a fireproof vault. While the registration and poll books are in the custody of the chairman of the county board of elections, he may, in his discretion, permit them to be inspected or copied, but only under his supervision.

The precinct registrar shall be responsible for the safekeeping of the registration and poll books while in his custody. While these books are in the hands of the precinct registrar prior to a primary or election, it shall be his duty, on application of any candidate or the county chairman of any political party, to permit the registration and poll books to be copied at the registrar's residence or at the voting place. The registrar shall not release the registration and poll books from his custody for this purpose. In lieu of permitting these books to be copied, the registrar may furnish an accurate list of all names appearing therein, for which service he shall be paid by the candidate or party chairman to whom the list is furnished, at a rate not to exceed two cents (2¢) for each name listed.

In counties which adopt full-time and permanent registration, the registration books, registration certificates, indexes, and other records of registration shall be and remain in the possession of the county board of elections. The board may exercise supervision and control of these records through its properly designated officers and employees. In such counties, it shall be the duty of the county board of elections, on application of any candidate, or the county chairman of any political party, or any other person, to furnish a list of the persons registered to vote in the county or in any precinct or precincts therein. In such a county no registrar shall furnish lists of registered voters or permit the registration records of his precinct to be copied. The county board of elections may furnish such lists upon sheets, cards, postal cards, or envelopes, and, upon request, it shall furnish selective lists according to party affiliation, sex, race, date of registration, or any other reasonable category. In all instances, however, the county board of elections shall require persons to whom such lists are furnished to make full reimbursement for the expense incurred in preparing them.

Any person wilfully failing or refusing to comply with the provisions and requirements of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1901, c. 89, s. 83; Rev., s. 4382; C. S., s. 6016; 1931, c. 80; 1939, c. 263, s. 3½; 1949, c. 916, ss. 6, 7; 1953, c. 843; 1955, c. 800; 1959, c. 883; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

Local Modification. — City of Rocky Mount: 1969, c. 1051.

Opinions of Attorney General. — Mr. Alex K. Brock, Executive Secretary, State Board of Elections, 11/10/69.

§ 163-67. Full-time registration; application to register. — (a) The county boards of elections shall establish, prior to January 1, 1971, a full-time system of registration, as prescribed by the State Board of Elections, under which the registration books, process, and records shall be open continuously for the acceptance of registration applications and for the registration of voters at all reasonable hours and time consistent with the daily function of all other county offices. In such counties no registration shall entitle a registrant to vote in any primary, general or special election unless the registrant shall have made application not less than 21 days, excluding Saturdays and Sundays, immediately preceding such primary, general or special election, provided that nothing shall prohibit registrants from registering to vote in future elections during such period.

When full-time registration has been established in a county, the official record of registration shall be made and kept in the form of an application to register which, as prescribed by the State Board of Elections, shall contain all information necessary to show the applicant's qualifications to register. In such a county, no person shall be registered to vote without first making a written, sworn, and signed application to register upon the form prescribed by the State Board of Elections. If the applicant cannot write because of physical disability, his name shall be written on the application for him by the election official to whom he makes application, but the specific reason for the applicant's failure to sign shall be clearly stated upon the face of the application.

Registrars and special registration commissioners appointed under the provisions of G.S. 163-41 may take registration applications from and administer registration oaths to qualified applicants without regard to the precinct residence of the registrar, special registration commissioner, or applicant: Provided, however, the county board of elections shall have power to limit the areas in which registrars and special registration commissioners may exercise the authority conferred in this paragraph.

Applications to register which have been completed by persons who have taken the required oath shall be forwarded promptly to the county board of elections. An application to register shall constitute a valid registration unless the county board of elections shall notify the applicant of its rejection within 30 days after its completion; provided that where the application is completed during the last 51 days prior to the election but at least 21 days prior to the election, the notification of rejection shall be made no less than 21 days prior to the election or the application shall constitute a valid registration. The loose-leaf binders containing the precinct records and the duplicate registration record, required by G.S. 163-65 (a), shall be kept at all times in a safe place.

For the purpose of receiving registration applications, registrars shall attend the voting places in their precincts only on such days and at such hours as may be fixed by the county board of elections: Provided, the county board of elections shall not require registrars to be present at the voting places for this purpose on any day less than 21 days, excluding Saturdays and Sundays, prior to a primary or election. In its discretion, the county board of elections may require no attendance by registrars at the voting places for the purpose of receiving registration applications.

The county board of elections is authorized to make reasonable rules and regulations, not inconsistent with law and State Board regulations, to insure full-time registration as provided in this section.

(b) In counties which have less than 14,001 registered voters the State Board of Elections shall prescribe reasonable regulations permitting such counties to operate a modified full-time office to the extent that the operation of such full-time office will not necessarily be required to be open such as is required in counties with total registered voters in excess of 14,000; provided, that nothing herein shall preclude such counties from maintaining office hours for registration consistent with the hours observed by all other offices within said county. In counties which operate under a modified full-time system as authorized by this section, registration commissioners shall not be allowed.

(c) No Registration on Day of Primary or Election; Exception. — No person shall be permitted to register on the day of an election or primary, unless he shall have become qualified to register and vote between the date the registration period expired and the date of the succeeding primary or election. No one shall be permitted to register on the day of a second primary unless he shall have become qualified to register and vote between the date of the first primary and the date of the succeeding second primary.

(d) The cost of maintaining the registration and election processes required by this section and § 163-67.1 shall be allocated by the respective boards of county commissioners upon approval of budget requirements submitted by the respective county board of elections. The respective boards of county commissioners shall appropriate reasonable and adequate funds necessary for the legal functions of the county boards of elections, including reasonable and just compensation of the executive secretary. (1901, c. 89, ss. 18, 21; Rev., ss. 4322, 4323; C. S., ss. 5946, 5947; 1923, c. 111, s. 3; 1933, c. 165, s. 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, ss. 3, 4; 1961, c. 382; 1963, c. 303, ss. 1, 2; 1967, c. 761, s. 3; c. 775, s. 1; 1969, c. 750, ss. 1, 2.)

Local Modification. — City of Rocky Mount: 1969, c. 1051.

Local Modification to Former § 163-31. —Randolph: 1965, c. 1123; town of Whitakers: 1965, c. 996, s. 1.

Local Modification to Former § 163-43.1. — Town of Whitakers: 1965, c. 996, s. 1.

Editor's Note. — The 1969 amendment rewrote subsection (a), rewrote subsection (b) as previously amended in 1967, and added subsection (d).

See Session Laws 1969, c. 171, as to new registration of voters required to be conducted during the period from April 1, 1969, to September 30, 1969, in the following counties: Alleghany, Ashe, Avery, Camden, Carteret, Caswell, Chatham, Cherokee, Clay, Columbus, Dare, Haywood, Macon, Polk, Rutherford, Sampson, Stokes, Watauga, Yancey.

Opinions of Attorney General. — Mr. Alex K. Brock, Executive Secretary, State Board of Elections, 11/10/69.

Time for Books to Remain Open. — Where the charter of a city or town provided that for the issuance of bonds an election shall be held "under the rules and regulations presented by law for regular elections," it referred to former § 163-31, requiring that the books of registration should be kept open for twenty days (now two weeks); and construing that section in connection with § 160-37, it was held that the former was for the purpose of a new and original registration, and the latter, in providing for only seven days, was for the purpose of revising the registration books so that electors might be registered whose names were not on the former books. Hardee v. City of Henderson, 170 N.C. 572, 87 S.E. 498 (1916).

Substantial Compliance Is All That Is Necessary. — The statutory requirement that the registration be kept open and accessible for a specified time, is regarded as essential by the courts in passing upon the validity of bonds to be issued by a municipality; but where it appears that the books were afterwards opened for a time actually sufficient to afford all an opportunity to register, though short of the legal period, and it further appears that the election has been hotly contested by both sides, it shall be deemed sufficient. Hill v. Skinner, 169 N.C. 405, 86 S.E. 351 (1915).

Effect of Noncompliance on Bond Issue. —The failure to keep the registry, for the question of the issuance of bonds in a special school district, open for twenty days (now two weeks), etc., required by former § 163-31, did not of itself render invalid the issuance of the bonds accordingly approved when it appeared that the matter was fully known and discussed, opportunity offered every voter to register, there was nothing to show that every elector desiring to vote had not done so, and there was no opposition to the measure manifested. Hammond v. McRae, 182 N.C. 747, 110 S.E. 102 (1921).

Registration on Day of Election. — Where a person otherwise legally qualified, who had not been allowed to register because at that time he had not been a resident of the State for one year, but who became qualified in that respect on or before the day of election, asked to be allowed to register on election day and tendered his ballot, which was refused, it was held that such vote should have been received. State ex rel. Quinn v. Lattimore, 120 N.C. 426, 26 S.E. 638 (1897).

§ 163-67.1. Executive secretary, appointment by county board of elections.—The county boards of elections, whether operating under the provisions of G.S. 163-67 (a) or (b) shall have authority to employ an executive secretary who shall be paid such compensation as recommended by the county board of elections and approved by the respective boards of county commissioners. The executive secretary may be empowered by the county board of elections to perform such administrative duties as might be assigned by the chairman. In addition to any administration duties the executive secretary shall be authorized to receive applications for registration and in pursuit of such authority shall be given the oath required of all registrars. In addition, the executive secretary may be authorized by the chairman to execute the responsibilities devolving upon the chairman from G.S. 163-73 provided such authorization by any chairman shall in no way transfer the responsibility for compliance with the law. The chairman shall remain liable for proper execution of all matters specifically assigned to him by law. (1969, c. 750, s. 1.)

§ 163-68. Registration of persons expecting to be absent during registration period.—Any citizen of the State, not duly registered, who may be qualified to vote under the Constitution and laws of this State, and who expects to be absent from the precinct in which he resides during the period for registration established by § 163-67, may be registered as provided in this section.

It shall be the duty of the chairman of the county board of elections to register any person possessing the qualifications to vote who presents himself for registration at any time other than the usual registration period, and who expects to be absent from the precinct in which he resides during all of the usual registration period. The chairman shall follow the registration procedure set out in § 163-72 for the registration of voters before the precinct registrar, except that he shall record each such registration in the book furnished him for that purpose by the State Board of Elections under the provisions of § 163-65.

Immediately after registrars are appointed for any primary or election to be held in the county, or in any political subdivision of the county, the chairman of the county board of elections shall certify to the registrar of each precinct the name, age, race, residence, and place of birth of each person he has registered who is entitled to vote in the particular precinct. It shall then be the duty of the registrar to enter upon the regular registration record of his precinct all names and accompanying information certified to him by the chairman of the county board of elections, writing opposite each name entered the words "Registered before chairman of county board of elections."

Persons registered in accordance with the provisions of this section shall be entitled to vote in primaries and elections held in the precinct in which registered in the same manner as if they had been registered by the precinct registrar. (1917, c. 23, s. 2; C. S., s. 5961; 1967, c. 775, s. 1.)

Local Modification to Former § 163-53.
—Graham: 1959, c. 780, s. 1.

§ 163-69. Permanent registration.—In counties which adopt full-time registration as authorized by § 163-67, the registration certificates shall be a permanent public record of registration and qualification to vote, and they shall not thereafter be cancelled. In such a county no new registration shall be ordered, either by precinct or county-wide, unless the permanent registration certificates have been lost or destroyed by theft, fire, or other hazard.

In the event of any division of precincts or change in precinct boundaries, the board of elections in such a county shall not cancel the existing registration or order a new registration, but it shall immediately correct the existing precinct registration certificates to conform to the division or change.

To the end that the permanent registration records shall be purged of the names of registrants who have died or who have become disqualified to vote since registration, the register of deeds of the county shall furnish to the county board of elections a certification of all death certificates as soon as they are recorded in his office. Upon receipt of such a certification from the register of deeds, the county board of elections shall cause to be removed from the permanent registration records of the county the name of any person appearing on the register of deeds' death certificate certification. In addition, the county board of elections is authorized to remove from the permanent registration records the names of all persons who have failed to vote, according to the poll or other record of voting, for a period of four years. Prior to removing any person's name from the registration records for failure to vote for four consecutive years, as authorized in this section, the county board of elections shall cause to be mailed to the person affected, at the address shown on the permanent registration records, a notice to show cause why his registration should not be voided If such a person shall appear and show that his qualifications to register and vote remain as they were when he was first registered, his name shall not be removed from the permanent registration record. Any person whose name has been removed from the permanent registration record for failure to vote for four consecutive years shall be permitted to reregister at any time he can demonstrate that he is qualified to register and vote.

Nothing in this section shall prohibit the county board of elections from restoring to the permanent registration records the name of any person upon proof that he is not dead or that he has voted in the county within the four-year period. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1.)

Local Modification. — Orange County: "The board of elections of Orange County is authorized and empowered to transfer the names of all persons registering during the registration period prior to the May, 1969, general municipal election of the town of Chapel Hill, and the election for terms on the Chapel Hill city board of education, to the permanent registration books of Orange County. The registrars appointed by said board of elections for the election precincts lying within the corporate limits of the town of Chapel Hill and the boundaries of the Chapel Hill city administrative school district, are directed to place the names of all persons who presented themselves for registration during such registration period, and who were duly registered on the supplementary registration books of said precinct on the permanent registration books of Orange County." 1969, c. 823.

Local Modification to Former § 163-31.2. — Alamance, Columbus, Forsyth, Franklin, Gaston, Harnett, Hertford, Johnston, Martin, Northampton, Randolph, Robeson, Rowan, Scotland and Washington: 1965, c. 1116, s. 1½, as amended by 1969, cc. 576, 927; Wayne: 1965, c. 1070; city of Rocky Mount: 1969, c. 1051; town of Whitakers: 1965, c. 996, s. 1.

§ 163-70. Registrar to certify number registered in precinct. — At the close of the registration period, each registrar shall promptly certify to the county board of elections the number of voters registered in his precinct.

The requirement of this section shall not apply unless ordered by the chairman of the county board of elections. (1967, c. 775, s. 1; 1971, c. 1166, s. 5.)

Editor's Note. — The 1971 amendment substituted "unless ordered by the chairman of the county board of elections" for "in counties which adopt full-time and permanent registration" in the second paragraph.

§ 163-71. Municipal corporations authorized to use county registration records.—Upon such terms as may be mutually agreed to by the governing body of any city, town, or other municipality and the boards of commissioners and elections of the county in which the municipality is situated, the municipality is authorized to use the registration books, process, or records of the county as the official record of registration of persons qualified to vote in municipal elections. If such an agreement is reached, the provisions of law applicable to the registration of voters in the county shall also apply to the city, town, or other municipal corporation for the purpose of its primary, general, regular, and special elections.

All elections heretofore held or ordered to be held by any city, town, or other municipal corporation in which the registration books, process, or records of the county in which the municipal corporation is located were used or ordered to be used are hereby in all respects ratified, validated, and confirmed. (1955, c. 763; 1967, c. 775, s. 1.)

Local Modification. — City of Rocky Mount: 1969, c. 1051.

§ 163-72. Registration procedure; oath.—Before questioning any applicant for registration as to his qualifications, the registrar shall administer the following oath to him:

"You swear (or affirm) that the statements and information you shall give me with respect to your identity and qualifications to register to vote shall be the truth, the whole truth, and nothing but the truth, so help you, God."

After being sworn, the applicant shall state as accurately as possible his name, age, place of birth, place of residence, political party affiliation, if any, under the provisions of G.S. 163-74, and any other information which may be material to a determination of his identity and qualification to be admitted to registration. The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to the applicant's qualifications.

If the registrar finds the applicant duly qualified and entitled to be registered, he shall administer the following registration oath to him:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of North Carolina not inconsistent therewith; that I have been or will have been a resident of the State of North Carolina for one year, and of this precinct for 30 days by the date of the next general election; that I am at least 18 years of age or will be by the date of the next general election; and that I have not registered to vote in any other precinct nor will I vote in any other state or county. So help me God." If the registrar finds the applicant qualified and entitled to be registered, and if the applicant has taken the oath prescribed in the preceding paragraph, the registrar shall register him by recording his name, age, race, residence, place of birth, and the precinct, county, or state from whence he has removed in the event of a removal, in appropriate columns of the registration book or other registration record.

The registration book or other record containing the information required by the preceding paragraph shall be evidence against the applicant in any court of law in a proceeding for false or fraudulent registration.

If an applicant for registration has removed from another precinct in the same county since his last registration, he shall, before being registered fill out and sign a transfer certificate in the form prescribed in the following paragraph.

Prior to the opening of each registration period, the chairman of the county board of elections shall furnish each precinct registrar with an adequate supply of registration transfer certificates printed in substantially the following form:

"To the Registrar of .... precinct .... County, N.C.

I hereby certify that I have removed my residence from .... voting precinct, where I was a registered voter, to .... voting precinct within the same county, and I have this day applied for registration before the undersigned registrar of this precinct in which I now reside, and I hereby request and authorize you to remove my name from the registration book of your precinct as I am no longer qualified to vote in your precinct.

Signed this .... day of ...., 19.....

....
(Signature of applicant)

Witness:

.... Registrar
.... Precinct
.... Address"

When an applicant has completed and signed a transfer certificate the registrar shall sign the certificate as a witness to the applicant's signature. Immediately after the close of the registration period the registrar shall mail all completed transfer certificates to the chairman of the county board of elections, who shall immediately mail them to the registrars of precincts from which the applicants have removed. Upon receipt of such certificates, the registrars shall cancel the registration of applicants who have requested and authorized that action on the registration records of their precincts.

In counties which adopt full-time and permanent registration, no registered voter shall be required to reregister upon moving from one precinct to another in the same county. In lieu thereof, in accordance with regulations prescribed by the county board of elections, not less than 21 days before any primary or election in which the removing elector desires to vote, he shall file with the county board of elections, or with a registrar or special registration commissioner, an affidavit setting forth his former residence, his new residence, the date of his removal to the new residence, and a statement that all his other qualifications to register and vote remain as they were at the time he was registered. If the county board of elections finds the facts asserted in the affidavit to be true, it shall immediately transfer the voter's registration to the precinct of his new residence. Thereafter the voter shall be considered registered and qualified to vote in his new precinct of residence. (1901, c. 89, s. 12; Rev., s. 4319; C. S., s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 6.)

Editor's Note.—The 1971 amendment, in the second oath, substituted "18" for "21," and inserted "nor will I vote in any other state or county."

In General.—While the General Assembly cannot add to the qualifications prescribed by the Constitution for voters, it has the power, and it is its duty, to enact such registration laws as will protect the rights of duly qualified voters, and no person is entitled to vote until he has complied with the requirements of those laws. Harris v. Scarborough, 110 N.C. 232, 14 S.E. 737 (1892).

Requirements Mandatory. — The requirements of the registration act are mandatory. Harris v. Scarborough, 110 N.C. 232, 14 S.E. 737 (1892).

Effect of Irregularities.—Where the disregard of constitutional or statutory directions does not affect the result it does not warrant a rejection of the vote. If none are incompetent to vote, the registration must be accepted as the act of a public officer, and entitles the electors to vote, notwithstanding irregularities as to administering the oath, the registrar's appointment, etc. State ex rel. DeBerry v. Nicholson, 102 N.C. 465, 9 S.E. 545 (1889).

Administration of Oath.—Article VI, § 2, of the State Constitution is satisfied by an oath to support the Constitution of the United States and that of the State. All valid laws, whether State or national are included by implication. State ex rel. DeBerry v. Nicholson, 102 N.C. 465, 9 S.E. 545 (1889).

In the absence of direct evidence to the contrary it will be presumed that the oath was taken with uplifted hand. State ex rel. DeBerry v. Nicholson, 102 N.C. 465, 9 S.E. 545 (1889).

Failure to administer oath would not invalidate an election to determine whether a school tax should be levied in absence of fraud or improper motive. Gibson v. Board of Comm'rs, 163 N.C. 510, 79 S.E. 976 (1913).

Registration by Other than Registrar.—The fact that a qualified voter was registered by a third person, with whom the registrar had left the books, does not disqualify him to vote, where such registration has been accepted as sufficient by the registrar. Quinn v. Lattimore, 120 N.C. 326, 26 S.E. 638 (1897).

Inquiry as to Qualifications of Voters.—Registrars of election may ask an elector if he had resided in the State twelve months next preceding the election, and four months (now thirty days) in the district in which he offers to vote. They may ask an elector as to his age and residence, as well as the township and county from whence he removed, in the case of a removal since the last election, and as to the name by which he is commonly known. If, in reply to such questions, the elector answers that he is twenty-one years old, and has resided in the State twelve months and in the county four months (now thirty days) preceding the election, it is the duty of the registrar, upon his taking the prescribed oath, to record his name as a voter; but bystanders may require him to be sworn as to his residence. In re Reid, 119 N.C. 641, 26 S.E. 337 (1896).

Sufficiency of Response.—In answer to the question of residence the designation of the county of residence is sufficient; but the designation of the state merely is insufficient. Harris v. Scarborough, 110 N.C. 232, 14 S.E. 737 (1892).

Denial of registration and voting to persons qualified to vote, even though by accident or mistake, vitiates the election particularly where it would affect the result. McDowell v. Massachusetts & So. Constr. Co., 96 N.C. 514, 2 S.E. 351 (1887). See also Perry v. Whitaker, 17 N.C. 475 (1833); People v. Canaday, 73 N.C. 198, 21 Am. Rep. 465 (1875).

§ 163-73. Registration and voting of new residents in presidential elections.—A person qualifying under G.S. 163-56 and desiring to vote for presidential and vice-presidential electors shall appear in person to register before the chairman of the board of elections of the county in which he is then residing not more than 20 days before the day set for holding the presidential election and not later than 5:00 P.M. on Friday preceding the day set for holding that election. For the registration of such persons, the chairman of the county board of elections shall maintain a separate registration book which shall conform in all respects to the registration books used in the precincts of the county.

In registering an applicant under this section, the chairman of the county board of elections shall adhere to the procedure prescribed for registrars in G.S. 163-72 except that the applicant shall not be required to take the registration oath prescribed in that section. In lieu thereof, in the presence of the chairman of the county board of elections, the applicant shall make application for a presidential ballot by completing, signing, and swearing to an application form substantially as follows. The chairman of the county board of elections shall administer the oath thereto:

"Application and Affidavit of New Residents for Voting for Presidential and Vice-Presidential Electors

State of North Carolina
County of ....

I, ..., do solemnly swear (or affirm) that I am a citizen of the United States; that I am at least 18 years of age or will become 18 by the date of the next Presidential Election; that I have been a legal resident of the State of North Carolina since ...., 19.... ; that I now reside at .... (Street or other address) in the City (or Town) of .... in .... precinct, of the County of......................., North Carolina; that I will have been a resident thereof at least 30 days prior to the date of the next Presidential Election; that I will be qualified to vote in said precinct for electors for President and Vice-President of the United States; that I have not voted, nor will I vote in the state of my former residence, or elsewhere in North Carolina; and I do now hereby make application for an official presidential ballot for my use in voting in said election in the State of North Carolina.

Signed ....
Address ....

Subscribed and sworn to before me this .... day of ...., 19.....

Signed ....
Chairman, County Board of
Elections of ....
County, N.C."

If the chairman of the county board of elections is satisfied that the application provided for above is in proper order and that the applicant is qualified to vote under the provisions of G.S. 163-56 for electors for President and Vice-President, he shall then give to the applicant one of the official presidential and vice-presidential ballots furnished by the State Board of Elections. Upon receiving the ballot, the applicant shall mark it in the presence of the chairman, but in such manner as not to disclose to the chairman how he has marked it. The applicant shall then fold the ballot, concealing the marking thereon, and deliver it to the chairman, who shall write his initials and a consecutive number on the top margin of the ballot and then place the ballot in a container envelope similarly numbered and seal it. On the face of the envelope there shall be printed or typed the following:

"This envelope contains the presidential ballot of ...., a new resident of this county and State, presently residing in .... precinct in .... County, North Carolina, and being voted pursuant to the provisions of Article 18 of Chapter 163 of the General Statutes of North Carolina."

The chairman of the county board of elections shall safely keep the sealed envelope containing the marked ballot of the new resident voter until the morning of the day of the election in which the ballot is to be voted. Before noon on that day the chairman shall deliver the ballot or cause it to be delivered to the registrar of the precinct in which the applicant is then residing, together with a list of all new resident voters voting in the presidential election and residing in that precinct. (1965, c. 871; 1967, c. 775, s. 1; 1971, c. 1166, s. 7; c. 1231, s. 1.)

Editor's Note. — The first 1971 amendment substituted "30" for "60" in the oath. The second 1971 amendment substituted "18" for "21" in the oath.

§ 163-74. Record of political party affiliation; changing recorded affiliation; correcting erroneous record.—(a) Record of Party Affiliation.—When any person applies for registration during a regular registration period prior to any primary or election, it shall be the duty of the registrar to request the applicant to state his political party affiliation and to record the affiliation in the registration book or appropriate record. Such recorded party affiliation shall thereafter be permanent unless, or until, the registrant changes it under the provisions of subsection (b) of this section.

If the applicant refuses to declare his party affiliation upon request, the registrar shall register his name, if he is otherwise qualified, without indicating any party affiliation opposite the name. The registrar shall then advise the applicant that, although registered, he cannot vote in any party primary but only in general elections held thereafter.

If the applicant states to the registrar that he is an independent indicating affiliation with no political party, the registrar shall register his name, if he is otherwise qualified, entering the designation "Independent" in the proper place on the registration record. The registrar shall then advise the applicant that, although registered, he cannot vote in any party primary but only in general elections held thereafter.

In all cases in which no party affiliation has been recorded in the registration book opposite the name of any registered elector, but not including those registered as independents, the registrant may, on primary election day, appear before the registrar of his precinct and have his political party affiliation recorded by taking the following oath to be administered by the registrar:

"I, ..., do solemnly swear (or affirm) that I desire in good faith to have my affiliation with the .... party recorded in the registration book of this precinct, so help me, God."

When the registrant has taken the prescribed oath, the registrar shall record his declared party affiliation opposite the registant's name in the registration book and permit him to vote in the primary of the party with which he is affiliated.

(b) Change of Party Affiliation.—No registered elector shall be permitted to change the record of his party affiliation for a primary or second primary after the close of the registration period immediately prior to the primary. Any registrant who desires to have the record of his party affiliation changed on the registration book shall, during a regular registration period only, go to the registrar of his precinct and request that the change be made. Before being permitted to have the change made, the registrar shall require the registrant to take the following oath, and it shall be the duty of the registrar to administer it:

"I, ..., do solemnly swear (or affirm) that I desire in good faith to change my party affiliation from the .... party to the .... party, and that such change of affiliation be made on the registration records in the manner provided by law, so help me, God."

In counties which adopt full-time and permanent registration, any registered voter who desires to have his party affiliation changed on the registration records of the county shall, not less than 21 days prior to any primary election, file an affidavit in the form of the oath set out in the preceding paragraph with the county board of elections, a registrar, or a special registration commissioner, in accordance with regulations to be adopted by the county board of elections. Upon receipt of the required oath, the county board of elections shall immediately change the record of the registrant's party affiliation to conform to that stated in the oath. Thereafter the voter shall be considered registered and qualified to vote in the primary elections of the political party which he designated in the oath.

(c) Correction of Erroneous Record of Party Affiliation.—If at any time the chairman of the county board of elections or the registrar of any precinct shall be satisfied that an error has been made in designating the party affiliation of any voter on the registration book of his precinct then, and in all such events, the chairman of the county board of elections or the registrar, having custody of the registration book, may make the necessary correction after first administering to the voter the following oath:

"I, ..., do solemnly swear (or affirm) that I desire in good faith to have the erroneous entry of my affiliation with the .... party in the registration book of this precinct corrected in the manner provided by law to show that I affiliate with the .... party, so help me, God." (1939, c. 263, s. 6; 1949, c. 916, ss. 4, 8; 1953, c. 843; 1955, c. 800; c. 871, s. 3; 1957, c. 784, s. 5; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

Good Faith of Party Change Is Subject to Challenge. — When a member of either party desires to change his party affiliation, the good faith of the change is a proper subject of inquiry and challenge. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

But Participation in Primary Cannot Be Denied by Unconstitutional Oath.—Membership in a party and a right to participate in its primary may not be denied an elector because he refuses to take an oath to vote in a manner which violates the constitutional provision that elections shall be free. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

Any elector who offers sufficient proof of his intent, in good faith, to change his party affiliation cannot be required to bind himself by an oath, the violation of which, if not sufficient to brand him as a felon, would certainly be sufficient to operate as a deterrent to his exercising a free choice among available candidates in the election —even by casting a write-in ballot. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

An oath to support future candidates violates the principle of freedom of conscience. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

The legislature is without power to shackle a voter's conscience by requiring an oath requiring an elector to vote for future candidates, as a price to pay for his right to participate in his party's primary. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

And Denies Free Ballot. — An oath to support future candidates denies a free ballot—one that is cast according to the dictates of the voter's judgment. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

§ 163-75. Appeal from denial of registration.—Any person who is denied registration for any reason may appeal the decision of the precinct registrar to the board of elections of the county in which the precinct is located. The person appealing shall file notice of his appeal with the county board of elections and with the registrar who refused to register him by 5:00 P.M. on the day following the day of denial. The notice of appeal shall be in writing, signed by the appealing party, and shall set forth the name, age, and address of the appealing party; it shall also state the reasons for the appeal. (1957, c. 287, s. 2; 1967, c. 775, s. 1.)

§ 163-76. Hearing on appeal before county board of elections. — Any registrar receiving a notice of appeal from denial of registration shall file the notice with the county board of elections by 5:00 P.M. on the day following the day on which he receives it. Every person appealing to the county board of elections from denial of registration shall be entitled to a prompt and fair hearing on the question of his right and qualifications to register as a voter. All cases on appeal to a county board of elections shall be heard de novo.

Two members of the county board of elections shall constitute a quorum for the purpose of hearing appeals on questions of registration. The decision of a majority of the members of the board shall be the decision of the board. The board is authorized to subpoena witnesses and to compel their attendance and testimony under oath, and it is further authorized to subpoena papers and documents relevant to any matters pending before the board.

If at the hearing the board shall find that the person appealing from the decision of the registrar is able to read and write any section of the Constitution of North Carolina in the English language, and if the board further finds that the appellant meets all other requirements of law for registration as a voter in the precinct in which application was made, the board shall enter an order to the precinct registrar directing that the appellant be registered as a voter in the precinct from which the appeal was taken. The county board of elections shall not order the applicant registered in any precinct other than that from which the appeal was taken. Not later than five days after an appeal is heard before the county board of elections, the board shall give notice of its decision to the appealing party. (1957, c. 287, s. 3; 1967, c. 775, s. 1.)

§ 163-77. Appeal from county board of elections to superior court.—Any person aggrieved by a final decision of a county board of elections denying registration may at any time within 10 days from the date on which he receives notice of the decision appeal therefrom to the superior court of the county in which the board is located. Upon such an appeal, the appealing party shall be the plaintiff and the county board of elections shall be the defendant, and the matter shall be heard de novo in the superior court in the manner in which other civil actions are tried and disposed of therein.

If the decision of the court be that the order of the county board of elections shall be set aside, then the court shall enter its order so providing and adjudging that the plaintiff is entitled to be registered as a qualified voter in the precinct in which he originally made application to register, and in such case the plaintiff's name shall be entered in the registration book of that precinct. The court shall not order the registration of any person in a precinct in which he did not apply to register prior to the proceeding in court.

From the judgment of the superior court an appeal may be taken to the appellate division in the same manner as other appeals are taken from judgments of that court in civil actions. (1957, c. 287, s. 4; 1967, c. 775, s. 1; 1969, c. 44, s. 82.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" in the last paragraph.

§ 163-78. New registrations; registration when books mutilated or destroyed; revisions of registration books.—(a) New Registration.—The county board of elections shall have power from time to time to order a new registration of all qualified persons for any or all precincts in the county to be conducted in the period prescribed by § 163-67(a). Upon adoption of a resolution ordering a new registration, the county board of elections shall give 20 days' notice thereof prior to the opening of the registration period by advertising in a newspaper having general circulation in the county, or in lieu thereof, at the courthouse door and at three other public places in the county. When a new registration is ordered, however, the names of persons who have been registered since the last preceding primary or general election by the chairman of the county board of elections under § 163-68 shall remain upon the registration books unless those so registered have died or otherwise become disqualified.

(b) Registration When Books Mutilated or Destroyed.—In the event the registration books for any precinct shall, prior to 30 days preceding any primary, general, or special election, be destroyed by fire or other cause or shall become mutilated to the extent they can no longer be used, the county board of elections shall provide the precinct registrar with a new registration book, and shall order a new registration of qualified persons in the precinct at the times and places and in the manner prescribed in G.S. 163-67(a). The county board of elections shall give notice of the new registration at least 10 days before the date on which the books will be opened by advertisement in a newspaper having general circulation in the county, or in lieu thereof, at the courthouse door and at three public places in the precinct affected. The notice shall state the opening and closing dates for registration, the location of the voting place, and the name of the precinct registrar. If time does not permit challenge day to be held on a separate Saturday, the county board of elections may combine it with the last Saturday for registration, so specifying in the notice of the new registration.

Should the destruction or mutilation of the precinct registration book occur less than 30 days before any primary, general, or special election, the county board of elections shall, insofar as time will permit, adhere to the provisions of the first paragraph of this section. If the time available makes it impossible to conduct a new registration in the affected precinct, each person presenting himself to vote in the precinct on the day of the ensuing general or special election shall be allowed to cast his ballot after signing and delivering to the registrar an affidavit in the following form:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of North Carolina not inconsistent therewith; that I have been a resident of the State of North Carolina for one year, and of this precinct for 30 days; that I am at least 18 years of age; and that I have not registered to vote in any other precinct. So help me, God."

If the ensuing election is a primary rather than a general or special election, the following affidavit shall be used:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of North Carolina not inconsistent therewith; that I have been or will have been a resident of the State of North Carolina for one year, and of this precinct for 30 days by the date of the next general election; that I am at least 18 years of age or will be by the date of the next general election; and that I have not registered to vote in any other precinct. So help me, God."

Persons permitted to vote under this procedure may be challenged in accordance with the provisions of G.S. 163-87 and G.S. 163-88. The registrar shall deliver all affidavits deposited with him to the county board of elections on canvass day. The affidavits shall not be deemed to constitute a new record of registration for the precinct for subsequent primaries and elections.

(c) Revision of Registration Books.—The county board of elections shall have power from time to time to order a revision of the registration books of any or all precincts in the county by requiring that they be purged of illegal or disqualified voters, after notice to such registrants as herein directed.

When the county board of elections makes an order of revision it shall be directed to the registrar and judges of election of the precinct to which it relates, directing them to meet at the precinct voting place on the first Saturday of the registration period before any primary or election, and to prepare from the registration books a list of those registrants, with their names and addresses as they appear on the registration books, who are, in the opinion of the precinct officials, dead or disqualified to vote by removal from the precinct. When the list is prepared the precinct officials shall, within 48 hours, deliver it to the chairman of the county board of elections.

Upon receipt of the list described in the preceding paragraph, the chairman of the county board of elections shall cause to be mailed to each listed person, at the address shown on the list, a notice requiring him to appear at the precinct voting place on the Saturday prescribed for challenge day, and show that he is legally entitled to vote in that precinct. In lieu of a personal appearance on challenge day, the registrant may furnish evidence by mail or otherwise that he is qualified to vote in the precinct.

Upon failure of such a person to make a personal appearance on challenge day, or upon failure of such a person to offer satisfactory evidence that he is qualified to vote in the precinct in the approaching primary or election, the precinct officials shall strike his name from the registration book.

However, in the event that any person whose name has been removed from the registration book of a precinct under the provisions of this section should appear at the voting place on primary or election day and give satisfactory evidence to the registrar and judges that he has never received any notice by mail or otherwise that his name has been placed on the list of disqualified voters in that precinct, and can satisfy the precinct officials that he is qualified to vote in that precinct, then his name shall be reentered on the registration book, and he shall be allowed to vote in that precinct as before. (1901, c. 89, s. 18; 1905, c. 510; Rev., ss. 4314, 4323; 1909, c. 894; C. S., ss. 5935, 5947; 1921, c. 181, s. 3; 1923, c. 111, s. 3; 1933, c. 165, ss. 3, 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 3; 1961, c. 382; 1963, c. 303, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1.)

Local Modification to Former § 163-23. —Graham: 1957, c. 119.

Editor's Note. — The 1971 amendment substituted "18" for "21" in both affidavit forms in subsection (b).

§§ **163-79 to 163-83:** Reserved for future codification purposes.

ARTICLE 8.

Challenges.

§ **163-84. Right to challenge; to whom challenge made.**—The right of any person to register, to remain registered, or to vote in a precinct may be challenged by any registered voter of that precinct, including the precinct registrar and judges of election: Provided, however, that in counties which adopt full-time and permanent registration, any person registered to vote in the county may challenge the right of any other person to register, to remain registered, or to vote in that county. In all counties challenges shall be made to the appropriate precinct registrar, except that in counties which adopt full-time and permanent registration challenges made on days other than the day of a primary or election shall be made to the county board of elections. Challenges shall be made, heard, and decided as provided in this article. (1901, c. 89, s. 19; Rev., s. 4339; C. S., s. 5972; 1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

Remedy for Irregular Registration. — Where it is alleged that the registration of voters in a primary municipal election was irregular and fraudulent, and the plaintiffs seek mandamus to compel a proper registration, and the statute and the charter of the city under which the election is to be held provided for challenge to voters so registered, mandamus being a proceeding in equity will not be issued, there being an adequate remedy at law by way of challenge provided by statute. Glenn v. Culbreth, 197 N.C. 675, 152 S.E. 332 (1929).

§ **163-85. Special times for challenge; challenge procedure; notice of hearing.**—It shall be the duty of the registrar to bring the registration books of his precinct to the precinct voting place on the Saturday immediately preceding each primary and election, and keep them open there from 9:00 A. M. until 3:00 P. M. for inspection by the registered voters of the precinct. During those hours any registered voter of the precinct shall be allowed to challenge the registration and voting rights of any person whose name appears on the books. When an objection is entered, the registrar shall write the word "challenged" in pencil upon the registration book opposite the name of the person objected to, then he shall appoint a time and place at which he, together with the precinct judges of election, shall hear and decide the challenge. The hearing shall in all events be held before the date of the immediately succeeding primary or election. The registrar shall prepare a written notice of each challenge, stating succinctly the grounds asserted and the time and place at which the challenge will be heard, and serve or have it served on the challenged registrant. If personal service is not possible, a copy of the notice shall be left at the residence of the challenged registrant. The registrar shall also furnish the challenger with a copy of the notice of hearing.

In counties which adopt full-time and permanent registration there shall be no single challenge day. In such counties the registration records shall be open to inspection by any registered voter of the county at reasonable hours on one or more days each week to be set by regulation of the county board of elections, at which time the registration of any elector of the county shall be subject to objection and challenge. Written notice of each challenge and hearing shall be prepared and served by the county board of elections in the manner in which registrars prepare and serve such notices in counties without full-time and permanent registration. (1901, c. 89, s. 19; Rev., s. 4339; C. S., s. 5972; 1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

§ 163-86. Hearing on challenge made prior to primary or election day.—A challenge entered on a day other than the day of a primary or election shall be heard and decided before the date of the next ensuing primary or election. Challenges shall be heard and decided by the registrar and judges of election of the precinct in which the challenged registrant is registered, except in counties which adopt full-time and permanent registration where challenges entered on a day other than the day of a primary or election shall be heard and decided by the county board of elections.

At the time and place set for the hearing on a challenge entered prior to the date of a primary or election, the election officials conducting the hearing shall explain to the challenged registrant the qualifications for registration and voting in this State. The officials conducting the hearing shall then administer the following oath to the challenged registrant:

"You swear (or affirm) that the statements and information you shall give in this hearing with respect to your identity and qualifications to be registered and to vote shall be the truth, the whole truth, and nothing but the truth; so help you, God."

After being sworn, the officials conducting the hearing shall examine the challenged registrant as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, the officials conducting the hearing shall tender to him the following oath or affirmation:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age or will become 18 by the date of the next general election; that you have or will have resided in this State for one year, and in the precinct for which registered for 30 days by the date of the next general election; that you are not disqualified from voting by the Constitution and laws of this State; that your name is ...., and that in such name you were duly registered as a voter of .... precinct; and that you are the person you represent yourself to be. So help you, God."

If the challenged registrant refuses to take the tendered oath, the challenge shall be sustained, and the officials conducting the hearing shall delete his name from the registration records. If the challenged registrant takes the tendered oath, the officials conducting the hearing may, nevertheless, sustain the challenge unless they are satisfied that the challenged registrant is a legal voter. If they are satisfied that he is a legal voter, they shall overrule the challenge and erase the word "challenged" which appears by the voter's name in the registration book.

Election officials conducting hearings on challenges shall have authority to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of the person challenged. (1901, c. 89, s. 22; Rev., s. 4340; C. S., s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1.)

Editor's Note. — The 1971 amendment substituted "18" for "21" in the second oath.

§ **163-87. Challenges allowed on day of primary or election.**—On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a party primary, any voter of the precinct who is registered as a member of the political party conducting the primary may, at the time any registrant proposes to vote, challenge his right to vote upon the ground that he does not affiliate with the party conducting the primary or does not in good faith intend to support the candidates nominated in that party's primary, and it shall be the duty of the registrar and judges of election to determine whether or not the challenged registrant has a right to vote in that primary according to the procedures prescribed in § 163-88. (1915, c. 101, s. 11; 1917, c. 218; C. S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14; 1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; c. 1203, s. 7; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

Voter Need Not Support Candidates of Party in Whose Primary He Voted.—The right of a qualified elector to vote in party primaries is confined to the primary of the existing political party with which he affiliates at the time of the holding of the primary. But the voter is not deprived of complete liberty of conscience or conduct in the future in the event he rightly or wrongly comes to the conclusion subsequent to the primary that it is no longer desirable for him to support the candidates of the party in whose primary he has voted. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

§ **163-88. Hearing on challenge made on day of primary or election.**—A challenge entered on the day of a primary or election shall be heard and decided by the registrar and judges of election of the precinct in which the challenged registrant is registered before the polls are closed on the day the challenge is made. When the challenge is heard the precinct officials conducting the hearing shall explain to the challenged registrant the qualifications for registration and voting in this State, and shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, and if, by the sworn testimony of at least one registered voter of the precinct, he shall prove his identity with the person in whose name he offers to vote and his continued residence in the precinct since he was registered, one of the judges of election or the registrar shall tender to him the following oath or affirmation, omitting the portions in brackets if the challenge is heard on the day of an election other than a primary:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age [or will become 18 by the date of the next general election]; that you have [or will have] resided in this State for one year, and in this precinct for 30 days [by the date of the next general election]; that you are not disqualified from voting by the Constitution and laws of this State; that your name is ...., and that in such name you were duly registered as a voter of this precinct; that you are the person you represent yourself to be; [that you are affiliated with the .... party]; and that you have not voted in this [primary] election at this or any other voting place. So help you, God."

If the challenged registrant refuses to take the tendered oath, the challenge shall be sustained, and the precinct officials conducting the hearing shall mark the registration records to reflect their decision, and they shall erase the challenged registrant's name from the poll book if it has been entered therein. If the challenged registrant takes the tendered oath, the precinct officials conducting the hearing may, nevertheless, sustain the challenge unless they are satisfied that the challenged registrant is a legal voter. If they are satisfied that he is a legal voter, they shall overrule the challenge and permit him to vote. Whenever any person's vote is received after having taken the oath prescribed in this section, the registrar or one of the judges of election shall write on the registration record and on the poll book opposite the registrant's name the word "sworn."

Precinct election officials conducting hearings on challenges on the day of a primary or election shall have authority to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of the person challenged. (1901, c. 89, s. 22; Rev., s. 4340; C. S., s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1.)

Editor's Note. — The 1971 amendment substituted "18" for "21" in the oath.

§ 163-89. Procedure for challenging absentee ballot and presidential ballot of new resident voter; right to appeal.—On election day any person registered to vote in a precinct may challenge an absentee voter's ballot or the presidential ballot of a new resident voter in his precinct. Each such ballot challenged shall be challenged separately. The challenge shall be addressed to the registrar, shall be written, and shall set out the specific reasons for the challenge, specifying why the ballot fails to comply with the law or why the absentee or new resident voter is not entitled to vote in the election.

When a challenge has been filed in accordance with the preceding paragraph, the registrar and judges shall proceed to hear the challenger's reasons for the challenge and make their decision without opening or removing the ballot from the container envelope. The burden of proof shall be upon the challenger in each case. The precinct officials conducting the hearing shall have authority to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of the voter challenged or to the validity or invalidity of the ballot.

If the challenge is sustained, the absentee or new resident voter's ballot shall not be counted; the container envelope shall not be opened but shall be marked "Challenge sustained." All envelopes so marked shall be filed with the county board of elections at the time of the county canvass when the precinct returns are filed. They shall be preserved intact by the chairman of the county board of elections for a period of six months, or longer if any contest shall then be pending concerning the validity of any absentee or new resident's ballot delivered to him.

If the challenge is not sustained, the absentee ballot or new resident's ballot shall be removed from the container envelope, deposited in the appropriate ballot box, counted, and tallied as provided in § 163-234.

Any voter whose ballot has been challenged under the provisions of this section may, if the challenge is sustained, either personally or through a duly authorized representative, appeal to the county board of elections on the day of the county canvass to sustain the validity of the voter's ballot, and if its validity is sustained, his ballot shall be counted and added by the board to the returns from the proper precinct.

In primary elections the provisions of this section shall apply to the ballots of servicemen seeking to avail themselves of the right to vote by absentee ballot under this chapter. (1939, c. 159, ss. 8, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 547, s. 8; 1965, c. 871; 1967, c. 775, s. 1.)

§ **163-90. Challenge as felon; answer not to be used on prosecution.**—If any registered voter is challenged as having been convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any question in relation to the alleged conviction, but his answers to such questions shall not be used against him in any criminal prosecution. (1901, c. 89, s. 71; Rev., s. 3388; C. S., s. 5974; 1967, c. 775, s. 1.)

§§ **163-91 to 163-95**: Reserved for future codification purposes.

SUBCHAPTER IV. POLITICAL PARTIES.

ARTICLE 9.

Political Party Definition.

§ **163-96. Political party defined; creation of new party.**—(a) Definition.—A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formation of a new political party which are signed by 10,000 persons who, at the time they sign, are registered and qualified voters in this State, and which comply with the conditions prescribed in subsection (b) of this section. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of July preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party.—Petitions for the formation of a new political party must declare that the signers intend to organize a new political party on a State-wide basis, that they intend to participate as a political party in the next succeeding general election, and that they intend to affiliate with the new party by voting for its nominees.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

The validity of the signatures on the petitions shall be proved in accordance with one of the following alternative procedures:

(1) The signers may acknowledge their signatures before an officer authorized to take acknowledgments, after which that officer shall certify the validity of the signatures by appropriate notation attached to the petition, or

(2) A person in whose presence a petition was signed may go before an officer authorized to take acknowledgments and, after being sworn, testify

to the genuineness of the signatures on the petition, after which the officer before whom he has testified shall certify his testimony by appropriate notation attached to the petition.

Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate

  a. Stating that the signatures on the petition have been checked against the registration records and

  b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall pay to the chairman of the county board of elections a fee of five cents (5¢) for each signature he is required to examine and verify under the provisions of this subsection. (1901, c. 89, s. 85; Rev., s. 4292; 1915, c. 101, s. 31; 1917, c. 218; C. S., ss. 5913, 6052; 1933, c. 165, ss. 1, 17; 1949, c. 671, ss. 1, 2; 1967, c. 775, s. 1.)

Editor's Note.—See 11 N.C.L. Rev. 226, for review and comment on former § 163-1, relating to the formation of new political parties. For note on definition of political parties, see 11 N.C.L. Rev. 148 et seq.

As to the 1949 amendment, which rewrote former § 163-1, see 27 N.C. Law Rev. 455.

The primary laws have no application to new political parties created by petition. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Any qualified voter has the legal right to sign a petition for the creation of a new political party, irrespective of whether such voter has participated in the primary election of an existing political party during the year in which the petition is signed, and regulations of the State Board of Elections are invalid if they undertake to establish and enforce the rule that a qualified voter is ineligible to join in a petition for the creation of a new political party during a year in which he has voted in the primary election of an existing political party. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Duty of State Board of Elections.—Upon the filing of a petition for the creation of a new political party, it is the duty of the State Board of Elections, in the first instance, to determine whether the petition is in accordance with the statutory requirements. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Notice and Hearing Required before Rejection of Petition. — Manifestly the statutes creating the State Board of Elections and defining its duties contemplate that the Board shall give petitioners for the creation of a new political party notice and an opportunity to be heard in support of their petition before rejecting it or adjudging it insufficient. Indeed, notice and hearing in such case are necessary to meet the constitutional requirement of due process of law. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

§ 163-97. Termination of status as political party.—When any political party fails to poll for its candidate for governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for governor or for presidential electors at a general election, it shall cease to be a political party within the meaning of the primary and general election laws and all other provisions of this chapter. (1901, c. 89, s. 85; Rev., s. 4292; C. S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1; 1967, c. 775, s. 1.)

§ 163-98. General election participation by new political party.—In the first general election following the date on which a new political party qualifies under the provisions of § 163-96, it shall be entitled to have the names of its candidates for State, congressional, and national offices printed on the official ballots, but it shall not be entitled to have the names of candidates for other offices printed on State, district, or county ballots at that election.

For the first general election following the date on which it qualifies under § 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of August prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates for State, congressional, and national offices in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. (1901, c. 89, s. 85; Rev., s. 4292; C. S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1; 1967, c. 775, s. 1.)

§§ 163-99 to 163-103: Reserved for future codification purposes.

SUBCHAPTER V. NOMINATION OF CANDIDATES.

ARTICLE 10.

Primary Elections.

§ 163-104. Primaries governed by general election laws; authority of State Board of Elections to modify time schedule.—Unless otherwise provided in this chapter, primary elections shall be conducted as far as practicable in accordance with the general election laws of this State. All provisions of this chapter and of other laws governing elections, not inconsistent with this article and other provisions of law dealing specifically with primaries, shall apply as fully to primary elections and to the acts and things done thereunder as to general elections. Nevertheless, for purposes of primary elections the State Board of Elections may, by general rule, modify the general election law time schedule with regard to ascertaining, declaring, and reporting results.

All acts made criminal if committed in connection with a general election shall likewise be criminal, with the same punishment, when committed in a primary election held under the provisions of this chapter. (1915, c. 101, s. 3; 1917, c. 218; C. S., s. 6020; 1967, c. 775, s. 1.)

Local Modification to Former §§ 163-117 to 163-147.—Session Laws 1945, c. 894, repealed former article 19, relating to primaries, insofar as its provisions apply to the nomination of Democratic candidates for the General Assembly and county offices in Mitchell County.

Session Laws 1957, c. 826, as amended by Session Laws 1959, c. 621, s. 2, provided that the former article should not apply to nominations of Democratic candidates for county offices and members of the House of Representatives in Cherokee County, but such candidates should be nominated by convention of the Democratic Party.

Session Laws 1961, c. 484, provided that the former article should not apply to nominations of Republican candidates for county offices and members of the General Assembly in Cherokee County, but such candidates should be nominated by conventions of the Republican Party.

Session Laws 1953, c. 1069, as amended by Session Laws 1959, c. 238, made the former article applicable to Watauga County. Session Laws 1955, c. 439, to the extent provided, made the former article applicable to Yancey County. Session Laws 1955, c. 442, made the former article applicable to the counties of Avery, Madison, Mitchell and Yancey for the purpose of nominating Democratic candidates for the State Senate.

Former Article Held Constitutional. — See McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

Construction of Former Article. — See Phillips v. Slaughter, 209 N.C. 543, 183 S.E. 897 (1936); McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

The manifest purposes of the primary system set up by our laws is to secure to the members of an existing political party freedom of choice of candidates, and to confine the right of qualified electors to vote in party primaries to the primary of the existing political party of which they are members at the time of holding of such primary. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

There is a well-defined distinction between a primary election and a regular election. A primary election is a means provided by law whereby members of a political party select by ballot candidates or nominees for office; whereas a regular election is a means whereby officers are elected and public offices are filled according to established rules of law. In short, a primary election is merely a mode of choosing candidates of political parties, whereas a regular election is the final choice of the entire electorate. Rider v. Lenoir County, 236 N.C. 620, 73 S.E.2d 913 (1952); Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

The primary laws have no application to new political parties created by petition. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

§ 163-105. Payment of expense of conducting primary elections.—The expense of printing and distributing the poll and registration books, blanks, and ballots for those offices required by § 163-108 (b) to be furnished by the State, and the per diem and expenses of the State Board of Elections while engaged in the discharge of primary election duties imposed by law upon that Board, shall be paid by the State.

The expenses of printing and distributing the ballots for those offices required by § 163-108 (c) to be furnished by counties, and the per diem (or salary) and expenses of the county board of elections and the registrars and judges of election, while engaged in the discharge of primary election duties imposed by law upon them, shall be paid by the counties. (1915, c. 101, s. 7; 1917, c. 218; C. S., s. 6026; 1927, c. 260, s. 21; 1933, c. 165, s. 14; 1967, c. 775, s. 1.)

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.—(a) Notice and Pledge.—No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date ....

I hereby file notice as a candidate for nomination as .... in the .... party primary election to be held on ...., 19..... I affiliate with the .... party, [and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the .... party.] I pledge to abide by the results of the primary and to support in the next general election only candidates nominated by the .... party.

I further pledge that if I am defeated in the primary I will not run for any office as a write-in candidate in the next general election.

Signed ....

Name of candidate

Witness:

....

....

(Title of witness)"

Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

Prior to the seventh Saturday before the primary, at State expense the State Board of Elections shall print and furnish to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File.—No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation, as permitted in G.S. 163-74(b), shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least three months prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as an independent shall be ineligible to file as a candidate in a primary election.

A person registered with no record of party affiliation shall be ineligible to file as a candidate in a primary election.

An unregistered person who desires to become a candidate in a party primary may do so if, at the time he files notice of candidacy, he signs and deposits with the election official with whom he files, a written pledge that he will, during the registration period prior to the next primary, register as an affiliate of the political party in whose primary he intends to run as a candidate. This may be accomplished by inserting in lieu of the bracketed phrase in the notice form set out in subsection (a) of this section, the following: "And I certify that I will register on the registration book or record of the precinct in which I reside as an affiliate of the .... party prior to the date of the primary in which I seek nomination."

(c) Time for Filing Notice of Candidacy.—Candidates seeking party primary nomination for the following offices may file their notices of candidacy with the State Board of Elections at any time but shall do so not later than 12:00 noon, on the Monday preceding the tenth Tuesday before the primary election in which they seek to run:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
Judges of the superior courts
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
Solicitors

A candidate seeking party primary nomination for one of the following offices may file his notice of candidacy with the board of elections of the county in which he resides at any time but shall do so not later than 12:00 noon, on the Monday preceding the tenth Tuesday before the primary election in which he seeks to run:

State Senators
Members of the State House of Representatives
All county offices
All township offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy.—In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North Carolina, or two or more vacancies for the office of superior court judge or two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

A person seeking party nomination for a specialized district judgeship established under § 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination.

In any primary in any senatorial or representative district entitled to elect more than one State Senator or member of the State House of Representatives, the positions being numbered as provided in G.S. 163-117, each candidate for nomination to the Senate or House of Representatives shall file with the appropriate county board of elections, at the time of filing notice of candidacy, a notice designating by number the seat to which he seeks nomination. Each seat shall be considered a separate office within the terms of G.S. 163-110, 163-114, and 163-115, and all other provisions of law governing nomination and election. No candidate shall be entitled to file for more than one seat. Votes cast for any candidate shall be effective only for the seat for which he has filed.

(e) Withdrawal of Notice of Candidacy.—Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. (1915, c. 101, ss. 6, 15; 1917, c. 218; C. S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C. S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798.)

Editor's Note. — The 1967 amendment added the last paragraph of subsection (d).

The first 1969 amendment inserted "Judges of the Court of Appeals" in subsection (c) and inserted "two or more vacancies for judge of the Court of Appeals" in the first sentence of subsection (d).

The second 1969 amendment, effective July 1, 1969, inserted "or two or more vacancies for the office of district court judge" in the first sentence of the first paragraph of subsection (d).

The first 1971 amendment, in subsection (c), substituted "on the Monday preceding the tenth Tuesday" for "on the Friday preceding the tenth Saturday" in the first paragraph, substituted "on the Monday preceding the tenth Tuesday" for "on the Friday preceding the sixth Saturday" in the second paragraph and made minor changes in punctuation.

The second 1971 amendment substituted "only" for "all" in the last sentence of the first paragraph of the pledge in subsection (a).

The third 1971 amendment, effective July 1, 1971, added the sentence at the end of the first paragraph of subsection (b).

Sections 2 and 3, c. 1241, Session Laws 1971, provide:

"Sec. 2. The filing deadline for candidates seeking party primary nomination in the 1972 State primary election for those offices enumerated in G.S. 163-106(c) shall be at 12 o'clock noon on Monday, February 21, 1972, notwithstanding the provisions contained in G.S. 163-106(c) to the contrary. The provisions of this section shall not be applicable after June 1, 1972.

"Sec. 3. During the period from January 1, 1972, through July 1, 1973, the State Board of Election is authorized to and shall set the dates on which the State Board of Elections is required to meet and appoint members of the county boards of elections and set the filing deadline. The State Board of Elections shall set the date on which the county boards of elections are required to meet and appoint precinct officials, and the date on which such officials shall take the oath of office, notwithstanding any provisions of Chapter 163 to the contrary."

Obligation Imposed upon Candidate. — Former § 163-119 attempted to place upon a candidate seeking nomination to public office in the primary election of an existing political party an obligation to adhere to such existing political party for at least a limited time in the future. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Effect of Failure to Indicate Vacancy.— Where there are two vacancies for the office of Associate Justice of the Supreme Court to be filled at the general election, a notice of candidacy for the nomination of a party which does not specify to which of the vacancies the candidate is asking the nomination is fatally defective. Ingle v. State Bd. of Elections, 226 N.C. 454, 38 S.E.2d 566 (1946).

§ 163-107. Filing fees required of candidates in primary; refunds.—(a) Fee Schedule.—At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of § 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and Solicitors of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
All township offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000.00)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000.00)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000.00)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000.00)
Constable, if compensated entirely by fees	Ten dollars ($10.00), plus one percent (1%) of the income of the office above one thousand dollars ($1,000.00)

Office Sought	Amount of Filing Fee
Justice of the peace, if compensated entirely by fees	Ten dollars ($10.00), plus one percent (1%) of the income of the office above one thousand dollars ($1,000.00)
All county and township offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

(b) Refund of Fees.—If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section, withdraws his notice of candidacy within the period prescribed in § 163-106 (e), he shall be entitled to have the fee he paid refunded. If the fee was paid to the State Board of Elections, the chairman of that Board shall certify to the Auditor that the refund should be made, and the Auditor shall give his warrant upon the Treasurer of the State who shall make the refund payment. If the fee was paid to a county board of elections, the chairman of the board shall certify to the county accountant that the refund should be made, and the county accountant shall make the refund in accordance with the provisions of the County Fiscal Control Act.

If any person files a notice of candidacy and pays a filing fee to a board of elections other than that with which he is required to file under the provisions of § 163-106 (c), he shall be entitled to have the fee refunded in the manner prescribed in this subsection for refund upon withdrawal of candidacy if he requests the refund before 12:00 noon, on Friday preceding the sixth Saturday before the primary. (1915, c. 101, s. 4; 1917, c. 218; 1919, cc. 50, 139; C. S., ss. 6023, 6024; 1927, c. 260, s. 20; 1933, c 165, s. 12; 1939, c. 264, s. 2; 1959, c. 1203, s. 5; 1967, c. 775, s. 1; 1969, c. 44, s. 84.)

Local Modification to Former § 163-120. —Mecklenburg: 1937, c. 382; Sampson: 1941, c. 111.

Editor's Note. — The 1969 amendment substituted "All Justices, Judges, and Solicitors of the General Court of Justice" for "Justices of the Supreme Court," "Judges of the superior courts," "Judges of the district courts" and "Solicitors" in the first column of the table in subsection (a).

For comment on the deductibility of campaign expenses, see 43 N.C.L. Rev. 1004 (1965).

Filing Fee Is Not a Tax.—The filing fee is in no sense a tax within the meaning of Art. II, § 23, or a local law as condemned by Art. II, § 24, of the Constitution of North Carolina. McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

§ 163-108. Certification of notices of candidacy. — (a) Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of § 163-106 (c) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name, address, and party affiliation of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Prior to the fourth Saturday before the primary election, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the following offices who have filed the required notice and pledge and paid the required filing fee to the State Board of Elections, so that their names may be printed on the official county ballots: Superior court judge, district court judge, and solicitor.

(c) In representative districts composed of more than one county and in multi-county senatorial districts in which there is no rotation agreement as provided in § 163-116, the chairman or secretary of the county board of elections in each county shall, within three days after the time for filing notices of candidacy under the provisions of § 163-106 (c) has expired, certify to the State Board of Elections (i) the names of all candidates who have filed notice of candidacy in his county for member of the State Senate, or, if such is the fact, that no candilates have filed in his county for that office, and (ii) the names of all candidates who have filed notice of candidacy in his county for the office of member of the State House of Representatives or, if such is the fact, that no candidates have iled in his county for that office. The chairman of the county board of elections shall forward a copy of this report to the chairman of the board of elections of each of the other counties in the representative or senatorial district. Within 10 days after the time for filing notices of candidacy for those offices has expired the chairman or secretary of the State Board of Elections shall certify to the chairman of the county board of elections in each county of each multi-county representative or senatorial district the names of all candidates for the House of Representatives and Senate which must be printed on the county ballots.

(d) Within two days after he receives each of the letters of certification from the chairman of the State Board of Elections required by subsections (b) and (c) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections. (1915, c. 101, s. 8; 1917, c. 218; C. S., s. 6028; 1927, c. 260, s. 22; 1966, Ex. Sess., c. 5, s. 8; 1967, c. 775, s. 1.)

§ 163-108.1. Nomination of members of House of Representatives.—Chapter 826, Session Laws of 1957; chapter 484, Session Laws of 1961; chapter 621, Session Laws of 1959; chapter 894, Session Laws of 1945; chapter 442, Session Laws of 1955; chapter 103, Public-Local Laws of 1941; chapter 439, Session Laws of 1955; chapter 238, Session Laws of 1959; and all other special and local acts providing for the nomination of candidates for the State House of Representatives by convention in any county, are modified and amended as follows: In the several representative districts of the State containing two or more counties, each political party shall nominate candidates for membership in the State House of Representatives according to the provisions of the state-wide primary law, article 19, chapter 163 of the General Statutes of North Carolina, or by district convention of the party when so provided by law. In a county assigned to a multi-county representative district, no political party shall nominate candidates for the State House of Representatives by party convention for the single county. (1966, Ex. Sess., c. 5, s. 16.)

Editor's Note.—This section, which derives from Session Laws 1966, Ex. Sess., c. 5, s. 16, was codified for the first time in the 1969 Cumulative Supplement to the General Statutes.

§ 163-109. Primary ballots; printing and distribution.—(a) General.—In primary elections there shall be as many kinds of official State, district, county and township ballots as there are legally recognized political parties, members of which have filed notice of their candidacy for nomination. The ballots for each political party shall be printed to conform to the requirements of § 163-140 (c) and to show the party's name, the name of each party member who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy and pledge with the proper board of elections, and who have paid the required filing fee, shall have their names printed on the official ballots of the political party with which affiliated.

(b) Ballots to Be Furnished by State Board of Elections.—It shall be the duty of the State Board of Elections to print official ballots for each political party having candidates for the following offices to be voted for in the primary:

United States Senator,
Member of the House of Representatives of the United States Congress,
Governor, and
All other State offices, except superior court judge, district court judge, and solicitor.

In its discretion, the State Board of Elections may print separate primary ballots for each of these offices, or it may combine some or all of them on a single ballot.

At least 30 days before the date of the primary, the State Board of Elections shall deliver a sufficient number of these ballots to each county board of elections. The chairman of the county board of elections shall furnish the chairman of the State Board of Elections with a written receipt for the ballots delivered to him within two days after their receipt.

(c) Ballots to Be Furnished by County Board of Elections.—It shall be the duty of the county board of elections to print official ballots for each political party having candidates for the following offices to be voted for in the primary:

Superior court judge,
District court judge,
Solicitor,
State Senator,
Member of the House of Representatives of the General Assembly,
All county offices, and
All township offices.

In printing primary ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

In its discretion, the county board of elections may print separate primary ballots for the district, county, and township offices listed in this subsection, or it may combine some or all of them on a single ballot. In a primary election, if there shall be 10 or more candidates for nomination to any one office, the county board of elections in its discretion may prepare a separate ballot for said office.

County boards of elections in senatorial and representative districts entitled to more than one seat in the State Senate or State House of Representatives shall have ballots for membership in those bodies printed to designate by number the Senate or House seat to which each candidate seeks nomination.

Three days before the primary election, the chairman of the county board of elections shall distribute official State, district, county, and township ballots to the registrar of each precinct in his county, and the registrar shall give him a receipt for the ballots received. On the day of the primary it shall be the registrar's duty to have all the ballots delivered to him available for use at the precinct voting place. (1915, c. 101, ss. 8, 17; 1917, c. 218; C. S., ss. 6028, 6037; 1927, c. 260, s. 22; 1933, c. 165, s. 16; 1966, Ex. Sess., c. 5, ss. 8, 10; 1967, c. 775, s. 1; c. 1063, s. 3.)

Editor's Note. — The 1967 amendment added the third paragraph of subsection (c).

Possession of Ballots.—It is the duty of the county board of elections to keep in its possession official ballots until delivery to the local officials. State v. Abernethy. 220 N.C. 226, 17 S.E.2d 25 (1941).

§ 163-110. Sole candidate declared nominee.—If only one aspirant files notice of candidacy for nomination for a given office by the party with which he affiliates, the appropriate board of elections shall, upon the expiration of the time fixed by § 163-106 for filing notice of candidacy for that office, declare him the nominee of his party. For the following offices, this declaration shall be made by the county board of elections with which the aspirant filed notice of candidacy: All county offices, all township offices, State Senators in single-county senatorial districts, and members of the State House of Representatives in single-county representative districts. For all other offices, this declaration shall be made by the State Board of Elections. When the sole aspirant has been declared his party's nominee for an office as provided in this section, his name shall not be printed on the primary ballot, but it shall be printed on the ballot to be voted at the general election as his party's candidate for that office. (1915, c. 101, ss. 13, 19; 1917, c. 218; C. S., ss. 6033, 6039; 1966, Ex. Sess., c. 5, ss. 9, 11; 1967, c. 775, s. 1.)

§ 163-111. Determination of primary results; second primaries.—(a) Nomination Determined by Majority; Definition of Majority.—Except as otherwise provided in this section, nominations in primary elections shall be determined by a majority of the votes cast. A majority within the meaning of this section shall be determined as follows:

(1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all aspirants by two. Any excess of the sum so ascertained shall be a majority, and the aspirant who obtains a majority shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the majority shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the aspirants who obtain a majority shall be declared the nominees. If more candidates obtain a majority than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

(b) Right to Demand Second Primary.—If an insufficient number of aspirants receive a majority of the votes cast for a given office or group of offices in a primary, a second primary, subject to the conditions specified in this section, shall be held:

(1) If a nominee for a single office is to be selected and no aspirant receives a majority of the votes cast, the aspirant receiving the highest number of votes shall be declared nominated by the appropriate board of elections unless the aspirant receiving the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary only the two aspirants who received the highest and next highest number of votes shall be voted for.

(2) If nominees for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a majority of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared the nominees unless some one or all of the aspirants equal in number to the positions remaining to be filled and having the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary to select nominees for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and all those receiving the second highest number of votes and demanding a second primary shall be printed on the ballot.

(c) Procedure for Requesting Second Primary.—

(1) An aspirant entitled to demand a second primary for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the State Board of Elections by 12:00 noon, on the third day after the result of the first primary has been officially declared:

Governor,
Lieutenant Governor,
All State executive officers.
Justices, Judges, or Solicitors of the General Court of Justice,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts not having rotation agreements,
Members of the State House of Representatives in multi-county representative districts.

(2) An aspirant entitled to demand a second primary for one of the offices listed below, and desiring to do so, shall file a written request for a second primary with the board of elections in the county in which he filed notice of candidacy by 12:00 noon, on the fifth day after the result of the first primary has been officially declared:

State Senators in single-county senatorial districts,
State Senators in multi-county senatorial districts having rotation agreements,
Members of the State House of Representatives in single-county representative districts,
All county officers,
All township officers.

(d) Tie Votes; How Determined.—

(1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, township, or single-county legislative district office (or for the State Senate in a multi-county district having a rotation agreement), the board of elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district having no rotation agreement and member of the State House of Representatives in a multi-county representative district), no recount shall be held by reason of the tie, but the two candidates having an equal vote shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within three days after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a majority, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within three days after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Date of Second Primary; Procedures.—If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held four weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary.

(f) No Third Primary Permitted.—In no case shall there be a third primary. The candidates receiving the highest number of votes in the second primary shall be nominated. If in a second primary there is a tie for the highest number of votes between two candidates, the proper party executive committee shall select the party nominee for the office in accordance with the provisions of § 163-114. (1915, c. 101, s. 24; 1917, c. 179, s. 2; c. 218; C. S., § 6045; 1927, c. 260; s. 23; 1931, c. 254, s. 17; 1959, c. 1055; 1961, c. 383; 1966, Ex. Sess., c. 5, s. 13; 1967, c. 775, s. 1; 1969, c. 44, s. 85.)

Editor's Note.—The 1969 amendment inserted "Justices, Judges, or Solicitors of the General Court of Justice" ir the list in subdivision (1) of subsection (c) and deleted therefrom "Justices of the Supreme Court," "Judges of the superior courts," "Judges of the district courts" and "Solicitors."

Effect of Failure to Comply with Provisions within Required Time. — Applying the rule of construction that every part of a statute should be given effect when possible, it was held that § 24 of the State Primary Law, ch. 101, Laws of 1915, providing, among other things, that the successful candidate for certain offices, shall receive a majority of the votes cast, when construed in connection with the proviso of the same section, that the one receiving the next highest vote, under a majority, shall file a request, in writing, with the appropriate board of elections for a second primary, entitles the one receiving the highest number of votes to be the candidate of the party to the office, upon the failure of the one receiving the next highest vote to comply with the provision within the time stated, i.e., within five days after the result of the primary has been officially declared. Johnston v. Board of Elections, 172 N.C. 162, 90 S.E. 143 (1916).

Same—Mandamus.—Where a candidate for membership in the General Assembly who has received the next highest vote in a legalized primary, but less than a majority of the votes cast, has failed to give written notice to the board of elections for a second primary within the time prescribed, and after duly declaring the result of the election the board then orders the second primary, the ministerial duty of recognizing the one receiving the highest vote as the candidate and putting his name on the ticket as such will be enforced by mandamus. Johnston v. Board of Elections, 172 N.C. 162, 90 S.E. 143 (1916).

The plaintiff in proceedings for mandamus to compel the county board of elections to declare him the successful candidate of his party in a primary election, or that he is entitled to a second primary to select between himself and another candidate for the same office, must show the denial of a present, clear legal right, by the failure of such board to have done so.

Umstead v. Board of Elections, 192 N.C. 139, 134 S.E. 409 (1926).

In order for a candidate for the party nomination for the legislature to obtain a writ of mandamus against the county board of elections to compel the ordering of a second primary, he must show that his opponents receiving the larger number of votes have not received a majority of the votes cast for said nomination, and within five days after the result has been officially declared and he has been notified thereof, he must have filed with the county board of elections a written request that the second primary be called by it. Umstead v. Board of Elections, 192 N.C. 139, 134 S.E. 409 (1926).

When Time Begins to Run.—When the provisions of former § 163-137 had been complied with and the result posted at the courthouse door of the county, the result of the election was sufficiently declared, and the contestant receiving the next highest vote, less than a majority, was required to file his written request for a second primary within five days thereafter, in accordance with former § 163-140 (now § 163-111). Johnston v. Board of Elections, 172 N.C. 162, 90 S.E. 143 (1916).

§ 163-112. Death of candidate before primary; filling vacancy.—If at the time the filing period closes only two persons have filed notice of candidacy for nomination by a given political party for a given office and thereafter, before the primary, one of the aspirants dies before the primary ballots are printed, the proper board of elections shall, upon notification of the death, immediately reopen the filing period for an additional five days during which additional candidates shall be permitted to file for the same party's nomination for the same office. If the primary ballots have been printed at the time the board of elections receives notice of the aspirant's death, it shall determine whether there will be sufficient time in which to reprint ballots before the primary in the event the filing period is reopened for five days. If the board determines there will be sufficient time in which to reprint the ballots, it shall immediately reopen the filing period for an additional five days in which additional candidates shall be permitted to file for the same party's nomination for the same office. Should one or more persons file notice of candidacy during the extended filing period their names shall be printed on the primary ballots together with that of the aspirant who filed during the original filing period and shall be voted for in the primary.

If the primary ballots have been printed at the time the board of elections receives notice of the candidate's death, and if the board determines there will not be sufficient time in which to reprint the ballots before the primary if the filing period is reopened for five days, then, regardless of whether one or more aspirants filed for nomination by the deceased candidate's party for the same office, the primary ballots shall not be reprinted, and the name of the deceased candidate shall not be deleted, stricken, or obliterated from the ballots. In such a case, should the deceased candidate poll the highest number of votes in the primary for party nomination to the office be sought, even though short of a majority, the proper party executive committee shall appoint the party nominee under the provisions of § 163-114. Should no candidate for the party nomination receive a majority of the votes cast in the primary and the second highest vote be cast for the deceased candidate, no second primary shall be held, and the proper board of elections shall declare the candidate receiving the highest vote the party's nominee for the office. (1959, c. 1054; 1967, c. 775, s. 1.)

§ 163-113. Nominee's right to withdraw as candidate.—A person who has been declared the nominee of a political party for a specified office under the provisions of § 163-175, § 163-192, or § 163-110, shall not be permitted to resign as a candidate unless, at least 30 days before the general election, he submits to the board of elections which certified his nomination a written request that he be permitted to withdraw. (1929, c. 164, s. 8; 1967, c. 775, s. 1.)

§ 163-114. Filling vacancies among party nominees occurring after nomination and before election. — If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by appointment of
Any elective State office United States Senator	State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives Judge of superior court Judge of district court Solicitor State Senator in a multi-county senatorial district not having a rotation agreement Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district State Senator in a multi-county senatorial district having a rotation agreement Member of State House of Representatives in a single-county representative district Any elective county office Any elective township office	County executive committee of political party in which vacancy occurs, but if the vacancy arises from a cause other than death, the vacancy shall not be filled unless the board of elections in the county in which the vacancy occurs issues an order to that effect

The party executive committee making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of § 163-139 shall apply. (1929, c. 164, s. 19; 1967, c. 775, s. 1.)

§ 163-115. Special provisions for obtaining nominations when vacancies occur in certain offices.—In the event a vacancy occurs in the office of clerk of superior court less than 30 days before a general election, the county executive committee of each political party may make a nomination as provided in § 163-114.

In the event a special election is called to fill a vacancy in the State's delegation in the United States House of Representatives, the provisions of § 163-13 shall apply.

If a vacancy occurs in an elective State or district office (other than member of the United States House of Representatives) during the period opening 10 days before the filing period for the office ends and closing 30 days before the ensuing general election, a nomination shall be made by the proper executive committee of each political party as provided in § 163-114, and the names of the nominees shall be printed on the general election ballots, unless the ballots have already been printed when the nominations are made, in which case the provisions of § 163-139 shall apply. (1915, c. 101, s. 33; 1917, c. 179, s. 3; c. 218; C. S., s. 6053; 1923, c. 111, s. 16; 1955, c. 574; 1957, c. 1242; 1966, Ex. Sess., c. 5, s. 14; 1967, c. 775, s. 1.)

§ 163-116. Agreements for rotation of candidates in senatorial districts of more than one county.—When any senatorial district consists of two or more counties, in one or more of which the manner of nominating candidates for legislative offices is regulated by statute, and the privilege of selecting the candidate for Senator, or any one of the candidates for Senator, of any political party (as the words "political party" are defined in § 163-96) in the senatorial district, is, by agreement of the several executive committees representing that political party in the counties constituting the district, conceded to one county therein, such candidate may be selected in the same manner as the party's candidates for county officers in the county, whether in pursuance of statute or under the plan of organization of such party. All nominations of party candidates for the office of Senator, made as hereinbefore provided, shall be certified by the chairman of the county board of elections of the county in which the nomination is made, to each chairman of the county board of elections in all of the counties constituting the senatorial district, and it shall be the duty of each chairman of the other counties to which the nominations are certified to print the name or names of the nominee or nominees on the official county ballot for the general election. (1911, c. 192; C. S., s. 6014; 1947, c. 505, s. 6; 1967, c. 775, s. 1.)

There were only two changes made in this section by the 1967 General Assembly: (a) A change in the number of the section, and (b) a change in the text as to where to refer to find the definition of "political party." These two changes do not constitute a "difference" contemplated in the wording of § 5 of the Voting Rights Act, i.e., "different from that in force or effect on November 1, 1964." Wilson v. North Carolina State Bd. of Elections, 317 F. Supp. 1299 (M.D.N.C. 1970).

A rotation agreement has the force and effect of a legislative enactment by virtue of this section. Wilson v. North Carolina State Bd. of Elections, 317 F. Supp. 1299 (M.D.N.C. 1970).

A rotation agreement is a "voting qualification or prerequisite to voting, or standard practice or procedure with respect to voting different from that in force or effect on November 1, 1964," and is therefore subject to the provisions of § 5 of the Voting Rights Act of 1965. Wilson v. North Carolina State Bd. of Elections, 317 F. Supp. 1299 (M.D.N.C. 1970).

Cited in Clayton v. North Carolina State Bd. of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).

§ 163-117. Seats in State Senate and House of Representatives to be numbered within senatorial and representative districts; each seat a separate office.—In each senatorial and representative district entitled to elect more than one State Senator or member of the State House of Representatives the positions shall bear identifying numbers, as follows: "Senate Seat 1," "Senate Seat 2," etc., or "House Seat 1," "House Seat 2," etc. Each seat shall be considered a separate office within the terms of G.S. 163-113, 163-122, 163-137, 163-140, 163-151, 163-169, 163-170, 163-175, 163-176, 163-177, 163-179, 163-180, 163-181, and all other provisions of law governing nomination and election. Votes cast for any candidate in a general election shall be effective only for the seat for which he has been nominated by a political party or for which he has filed his independent candidacy under G.S. 163-122. (1967, c. 1063, s. 1.)

Editor's Note. — Session Laws 1971, c. 406, makes all provisions of the primary laws as contained in this Chapter applicable to Avery County and repeals Session Laws 1955, c. 442, insofar as it conflicts.

Session Laws 1967, c. 1063, s. 4, as amended by Session Laws 1971, c. 1237, provides: "The provisions of this act shall apply to the following House of Representatives Districts: 1st, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 12th, 13th, 14th, 16th, 18th, 19th, 22nd, 24th, 28th, 30th, 31st, 33rd, 38th, 40th, 43rd."

Session Laws 1971, c. 1234, s. 1, repealed Session Laws 1967, c. 1063, s. 5, exempting certain Senatorial Districts from the provisions of this section. Session Laws 1971, c. 1234, s. 1.1, provides that this section shall not apply to the following Senatorial Districts: District 10, District 13, District 14, District 19, District 20, District 23, District 26.

§ 163-118. Numbers assigned to Senate and House seats to be designated by State Board of Elections.—The authority for designating the numbers to be assigned in each Senate and House district covered under § 163-117, subsection (d) of § 163-106 and subsection (c) of § 163-109 shall be vested in the State Board of Elections. (1967, c. 1270.)

§§ 163-119 to 163-121: Reserved for future codification purposes.

ARTICLE 11.

Nomination by Petition.

§ 163-122. Independent candidates nominated by petition. — Any qualified voter who seeks to have his name printed on the general election ballot as an independent or nonpartisan candidate shall:

(1) On or before the last Saturday in May preceding the general election, file with the appropriate board of elections, State or county, written petitions requesting him to be a candidate for a specified office, signed by qualified voters of the political division in which the office will be voted for equal in number to twenty-five percent (25%) of those who, in the last gubernatorial election in the same political division, voted for Governor.

(2) At the time of filing the petitions referred to in subdivision (1) of this section, file with the chairman or secretary of the appropriate board of elections his affidavit that he seeks to become an independent or nonpartisan candidate for the office specified and that he does not affiliate with any political party.

When the provisions of this section have been complied with, the board of elections with which the petitions and affidavit have been filed shall cause the independent candidate's name to be printed on the general election ballots in accordance with the provisions of § 163-140. (1929, c. 164, s. 6; 1931, c. 223, 1935, c. 236; 1967, c. 775, s. 1.)

§§ 163-123 to 163-127: Reserved for future codification purposes.

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

ARTICLE 12.

Precincts and Voting Places.

§ 163-128. Election precincts and voting places established or altered.—Each county shall be divided into a convenient number of precincts for purpose of registration and voting, and there shall be at least one precinct encompassed within the territory of each township: Provided, however, that upon a resolution adopted by the county board of elections a precinct may encompass territory from more than one township. When such a resolution has been adopted by the county board of elections to assign voters from more than one township to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the township in which such voters reside.

The county board of elections may adopt the present election precincts and voting places, or by resolution it may establish new ones, but the precincts and voting places fixed in each county shall remain as they now are until altered.

The county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts and voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, or discontinuing a precinct or voting place the county board of elections shall give twenty (20) days' notice thereof prior to the beginning of the registration period at which it is to take effect, by advertising in some newspaper having general circulation in the county or, in lieu thereof, at the courthouse door and at three other public places in the county. (Rev., s. 4313; 1913, c. 53; C. S., s. 5934; 1921, c. 180; 1933, c. 165, s. 3; 1967, c. 775, s. 1; 1969, c. 570.)

Local Modification. — City of Rocky Mount: 1969, c. 1051.

Editor's Note.—The 1969 amendment rewrote the first paragraph.

§ 163-129. Structure at voting place; marking off limits of voting place.—At the voting place in each precinct established under the provisions of § 163-128, the county board of elections shall provide or procure by lease or otherwise a suitable structure or part of a structure in which registration and voting may be conducted. To this end, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.

The county board of elections shall inspect each precinct voting place to ascertain how it should be arranged for voting purposes. In its discretion, the county board of elections may direct the registrar and judges of any precinct to define the voting place by roping off the area or otherwise enclosing it to insure that at no point the limits lie more than 100 feet from the ballot boxes or voting machines. The space roped off or enclosed for the voting place may contain area both inside and outside the structure in which registration and voting are to take place. (1929, c. 164, s. 17, 1967, c. 775, s. 1.)

§§ 163-130 to 163-134: Reserved for future codification purposes.

ARTICLE 13.

General Instructions.

§ 163-135. Applicability of article. — (a) In General.—The provisions of this article shall apply to all elections in all counties, cities, towns, townships, and school districts in the State of North Carolina.

(b) Primary Elections.—The provisions of this article shall apply to all primary elections held in this State, or in any county, as fully as it applies to general elections.

(c) Special Elections.—Every election held in pursuance of a writ from the Governor shall be conducted in accordance with the provisions of this article, so far as the particular case can be governed by general rules.

(d) Referenda.—This article shall apply to and control all elections for the issuance of bonds and to all other elections in which any constitutional amendment, question, or issue is submitted to a vote of the people.

(e) Municipal Primaries and Elections.—With respect to all municipal primaries and elections, wherever in this article appear the words "county board of elections" shall be deemed to be written the words "city or town governing body"; and wherever appear the words "chairman of board of elections" shall be deemed to be written the words "mayor of town or city." (1901, c. 89, s. 75; Rev., s. 4341; C. S., s. 5975; 1929, c. 164, ss. 2, 4, 34, 42; 1967, c. 775, s. 1.)

Local Modification to Former § 163-148. —Ashe: 1933, c. 557; 1935, c. 259; 1937, c. 170.

Former Article 10 Construed in Pari Materia with Primary Election Law.—See Phillips v. Slaughter, 209 N.C. 543, 183 S.E. 897 (1936); McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

Former § 163-150 was to be construed in pari materia with § 153-96. Both sections related to the same subject matter, and as there was no material conflict between them, they were both in full force and effect. Parker v. County of Anson, 237 N.C. 78, 74 S.E.2d 338 (1953).

Ballot for School Bond Election Held Sufficient.—See note under § 153-96.

§ 163-136. Preparation, distribution and financing of ballots. — (a) Ballots a Public Expense.—All ballots cast in the elections, primaries, and referenda listed below shall be printed and distributed at public expense:

(1) General and special elections for national, State, district, county, and municipal offices in the counties, districts, cities, towns, and other political subdivisions of the State.

(2) Primaries for nomination of candidates for the offices listed in the preceding subdivision.

(3) Elections or referenda for the issuance of bonds.

(4) Elections or referenda in which any constitutional amendment, question or issue is submitted to a vote of the people.

(b) Printing and Distribution.—The printing and distribution of ballots shall be arranged, handled, and paid for as follows:

(1) For municipal elections, primaries, and referenda, by the municipal authorities conducting the election, primary, or referendum, at the expense of the municipality.

(2) For county, township, single-county district, and legislative district elections, primaries, and referenda, by the responsible county board of elections, at the expense of the county.

(3) For all elections, primaries, and referenda not specified in the two preceding subdivisions, by the State Board of Elections, at the expense of the State.

(c) Paper Ballots for General Elections and County Bond Elections where Voting Machines Are Used.—In counties in which voting machines are used at some or all voting places, paper ballots shall be printed for purposes of absentee voting in state-wide general elections and in county bond elections under the provisions of articles 20 and 21. (1929, c. 164, s. 3; 1963, c. 457, s. 9; 1967, c. 775, s. 1; c. 952, s. 2.)

Editor's Note. — The 1967 amendment, effective for any election arising on or after Sept. 1, 1967, made subsection (c) applicable to bond elections.

§ 163-137. General and special election ballots; names and questions to be printed thereon; distribution.—(a) The ballots printed for use in general and special elections under the provisions of this article shall contain:

(1) The names of all candidates who have been put in nomination in accordance with the provisions of this chapter by any political party recognized in this State.

(2) The names of all persons who have qualified as independent candidates under the provisions of § 163-122.

(3) All questions, issues, and propositions to be voted on by the people.

(b) The ballots prepared for use in general and special elections under the provisions of this article by the State Board of Elections shall be printed and delivered to the county boards of elections at least 45 days prior to the date of any election in which absentee voting is permitted and at least 30 days prior to the date of any election in which absentee voting is not permitted. (1929, c. 164, s. 5; 1945, c. 972; 1957, c. 1264; 1963, c. 934; 1967, c. 775, s. 1.)

The right of a candidate to have his name printed on the official ballot is dependent upon his becoming a nominee in the required manner. McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

§ 163-138. Instructions for printing names on primary and election ballots.—In preparing primary, general, and special election ballots, the legal name of a candidate (together with his nickname in the situation outlined below) shall be printed precisely as it appears on the notice of candidacy form filed in accordance with § 163-106 or in petition forms filed in accordance with § 163-122. If the candidate has inserted a nickname on the notice of candidacy or in the petition, it shall be printed on the ballot immediately before the candidate's surname and shall be enclosed by parenthesis. No title, appendage, or appellation indicating rank, status, or position, shall be printed before or following or as a nickname or in connection with the name of any candidate on any ballot. Nevertheless, a candidate who is a married woman may use the prefix "Mrs." and a candidate who is a single woman may use the prefix "Miss" before her name if she so elects. (1929, c. 164, s. 5; 1945, c. 972; 1957, c. 1264; 1963, c. 934; 1967, c. 775, s. 1.)

§ 163-139. Repriniting ballots when substitute candidate is named.—(a) Before General or Special Election.—After the official ballots for a general or special election have been printed by the proper elections board, the death, resignation, or disqualification of a candidate whose name appears on the official ballots shall not require that the ballots be reprinted, although the responsible board of elections may have the ballots reprinted if it desires to do so.

If a candidate dies, resigns, or otherwise becomes disqualified after his name has been printed on an official general or special election ballot, and if a nomination has been made to fill the vacancy as authorized by § 163-114, the name of the substituted nominee shall not appear on the official ballots unless the responsible board of elections decides that it is feasible and advisable to reprint the ballots to show the name of the substituted nominee. If the ballots are not reprinted, a vote cast for the candidate whose name is printed on the ballot shall be counted as a vote for the substituted candidate whose name has been certified to the appropriate board of elections under the provisions of § 163-114.

(b) Before Primary Election.—The provisions of § 163-112 shall apply in the event a candidate for party nomination dies before the primary. (1929, c. 164, s. 7; 1931, c. 254, s. 1; 1947, c. 505, s. 8; 1967, c. 775, s. 1.)

§ 163-140. Kinds of ballots; what they shall contain; arrangement.—(a) Kinds of General Election Ballots; Right to Combine.—For purposes of general elections, there shall be seven kinds of official ballots, entitled:

(1) Ballot for presidential electors
(2) Ballot for United States Senator
(3) Ballot for member of the United States House of Representatives
(4) State ballot
(5) County ballot
(6) Township ballot
(7) Ballot for constitutional amendments and other propositions submitted to the people.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b) (4) of this section shall be used.

(b) General Election Ballots.—

(1) Ballot for Presidential Electors: On the ballot for presidential electors

there shall be printed, under the titles of the offices, the names of the candidates for President and Vice-President of the United States nominated by each political party qualified under the provisions of § 163-96. A separate column shall be assigned to each political party with candidates on the ballot, and the party columns shall be separated by distinct black lines. At the head of each column the party name shall be printed in large type and below it a circle, one-half inch in diameter, and below the circle the names of the party's candidates for President and Vice-President in that order. On the face of the ballot, above the party column division, the following instructions shall be printed in heavy black type:

"a. To vote this ballot, make a cross (X) mark in the circle below the name of the potitical party for whose candidates you wish to vote.

b. A vote for the names of a political party's candidates for President and Vice-President is a vote for the electors of that party, the names of whom are on file with the Secretary of State.

c. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the State Board of Elections.

The official ballot for presidential electors shall not be combined with any other official ballots.

(2) Ballot for United States Senator: Beneath the title and general instructions set out in this subsection, the ballot for United States Senator shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and one to independent candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for independent candidates shall be printed in large type the words "Independent Candidates." The name of each political party's candidate for United States Senator shall be printed in the appropriate party column, and the names of independent candidates for the office shall be printed in the column headed "Independent Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and independent column division, the following instructions shall be printed in heavy black type:

"a. Vote for only one candidate.

b. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the State Board of Elections.

When the ballot for United States Senator is combined with a ballot for another office, below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot to the top above the party and independent column division:

"a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. If you tear or deface or wrongly mark this ballot, return it and get another."

(3) Ballot for Member of the United States House of Representatives: Beneath the title and general instructions set out in this subsection, the congressional district ballot for member of the United States House of Representatives shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and one to independent candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for independent candidates shall be printed in large type the words "Independent Candidates." The name of each political party's candidate for member of the United States House of Representatives from the congressional district shall be printed in the appropriate party column, and the names of independent candidates for the office shall be printed in the column headed "Independent Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and independent column division, the following instructions shall be printed in heavy black type:

"a. Vote for only one candidate.

b. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the State Board of Elections.

When the ballot for member of the United States House of Representatives is combined with a ballot for another office, below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot at the top above the party and independent column division:

"a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. If you tear or deface or wrongly mark this ballot, return it and get another."

(4) State Ballot: Beneath the title and general instructions set out in this subsection, the ballot for State officers (including judges of the superior court) shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having candidates for State offices and one to independent candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for independent candidates shall be printed in large type the words "Independent Candidates." Below the party name in each column shall be printed a circle, one-half inch in diameter, around

which shall be plainly printed the following instructions: "For a straight ticket, mark within this circle." With distinct black lines, the State Board of Elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of independent candidates shall be printed in the appropriate office section of the column headed "Independent Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and independent column division, the following instructions shall be printed in heavy black type:

"a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. If you should insert a cross (X) mark in one of the party circles at the top of the ballot and also mark in the voting square opposite the name of any candidate of any party, your ballot will be counted as a straight ticket vote for all of the candidates of the party whose circle you marked.

d. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the State Board of Elections.

(5) County Ballot: Beneath the title and general instructions set out in this subsection, the ballot for county officers (including solicitor for the solicitorial district in which the county is situated, district judge for the district court district in which the county is situated, and members of the General Assembly in the senatorial and representative districts in which the county is situated) shall be divided into parallel columns separated by distinct black lines. The county board of elections shall assign a separate column to each political party having candidates for the offices on the ballot and one to independent candidates, if any. At the head of each party column the party's name shall be printed in large type and at the head of the column for independent candidates shall be printed in large type the words "Independent Candidates." Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." With distinct black lines, the county board of elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen

for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of independent candidates shall be printed in the appropriate office section of the column headed "Independent Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and independent column division, the following instructions shall be printed in heavy black type:

"a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. If you should insert a cross (X) mark in one of the party circles at the top of the ballot and also mark in the voting square opposite the name of any candidate of any party, your ballot will be counted as a straight ticket vote for all of the candidates of the party whose circle you marked.

d. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the county board of elections.

(6) Township Ballot: The township ballot shall contain the names of candidates for constable and justices of the peace, and shall be prepared by the county board of elections in conformity with the instructions prescribed in this section for the county ballot.

(7) Ballot for Constitutional Amendments and Other Propositions Submitted to the People: The form of ballot used in submitting a constitutional amendment or other proposition or issue to the voters of the entire State shall be prepared by the State Board of Elections and approved by the Attorney General. The form of ballot used in submitting propositions and issues to the voters of a single county or subdivision shall be prepared by the county board of elections. In a referendum the issue presented to the voters with respect to each constitutional amendment, question, or proposition, shall be printed in the form laid down by the General Assembly or other body submitting it. If more than one amendment, question, or proposition is submitted on a single ballot, each shall be printed in a separate section, and the sections shall be numbered consecutively. On the face of the ballot, above the issue or issues being submitted, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible board of elections, State or county.

(c) Primary Election Ballots.—

(1) Kinds of Primary Ballots; Right to Combine: For the purposes of primary elections, there shall be five kinds of official ballots, entitled:

a. Primary ballot for United States Senator

b. Primary ballot for member of the United States House of Representatives

c. State primary ballot
d. County primary ballot
e. Township primary ballot

Use of official primary ballots shall be limited to the purposes indicated by their titles. The printing on all primary ballots shall be plain and legible but, unless large type is specified by this chapter, type larger than 10-point shall not be used in printing primary ballots.

Primary ballots shall be prepared in accordance with the provisions of § 163-109 and the provisions of this section as modified by the provisions of this subsection.

(2) Separate Ballots for Each Political Party: For each political party conducting a primary election separate ballots shall be printed, and the paper used for each party's ballots shall be different in color from that used for the ballots of other parties. Primary ballots shall not provide for voting a straight party ticket, but a voting square shall be printed to the left of the name of each candidate appearing on the ballot.

(3) Rotation of Positions on Ballots Among Candidates: The board of elections, State or county, responsible for printing and distributing primary election ballots shall have them printed so that the names of opposing candidates for any office shall, as far as practicable, occupy alternate positions upon the ballot, to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position, and every other position, if any, upon an equal number of ballots; and the ballots shall be distributed among the precinct voting places impartially and without discrimination.

(4) Facsimile Signatures: On the bottom of each primary ballot shall be printed an identified facsimile of the signature of the chairman of the board of elections, State or county, responsible for its preparation.

(d) Municipal Primary and Election Ballots.—In all city and town primaries and elections there shall be an official ballot on which shall be printed the names of all candidates for offices in the city or town. The municipal ballot shall conform as nearly as possible to the provisions of subsections (a) through (c) of this section, but on the bottom of the municipal ballot shall be printed an identified facsimile of the signature of the city or town clerk. (1929, c. 164, s. 9; 1931, c. 254, ss. 2-10; 1933, c. 165, ss. 20, 21; 1939, c. 116, s. 1; 1947, c. 505, s. 9; 1949, c. 672, s. 2; 1955, c. 812, s. 1; 1967, c. 775, s. 1.)

§ 163-141. Sample ballots.—Sample ballots of each kind to be voted in each primary and election shall be printed by the board of elections responsible for printing the official ballots. Sample ballots shall be printed on paper of a color different from that used for the official ballots, and each sample ballot shall have the words "Sample Ballot" printed conspicuously on its face. Sample ballots shall be used for instructional purposes and shall not be used as official ballots.

The State Board of Elections shall distribute the sample ballots for which it is responsible to the county boards of elections at the time it distributes the official ballots; and the county board of elections, at the time it is required to distribute official ballots, shall furnish each precinct registrar with an adequate supply of the sample ballots prepared by the State Board of Elections as well as of those the County board is required to prepare. (1929, c. 164, s. 13; 1931, c. 254, s. 12; 1967, c. 775, s. 1.)

§ 163-142. Number of ballots to be furnished each voting place; packaging; date of delivery; receipt for ballots; accounting for ballots.—The county board of elections shall furnish each precinct voting place with each kind of ballot to be voted in the primary or election in a number equal to one hundred five percent (105%) of the number of persons registered to vote in the primary or election in the precinct.

Each kind of ballot shall be wrapped in a separate package or packages for each precinct voting place. The number of ballots to be placed in each package shall be determined by the chairman of the county board of elections, and the outside of each package shall be marked or stamped to show the kind of ballot and the number contained.

Three days before the primary or election, the county board of elections shall deliver to each precinct registrar the required number of ballots of each kind to be voted in his precinct, and the registrar shall immediately give a receipt for the ballots delivered to him in accordance with the information marked or stamped on the ballot packages.

Within three days after the primary or election, the registrar shall deliver to the county board of elections all ballots spoiled in his precinct. At the same time he shall also deliver to the county board of elections all unused ballots from his precinct. Thereupon, the county board of elections shall make a check to ascertain whether the total of spoiled ballots and unused ballots, when added to the number of ballots cast in the precinct, equal the number of ballots furnished to and receipted for by the registrar prior to the primary or election.

The provisions of this section shall not apply to voting places at which voting machines are used. (1929, c. 164, ss. 10, 11, 14, 25; 1933, c. 165, s. 22; 1951, c 849, ss. 1, 2; 1967, c. 775, s. 1.)

§ 163-143. Ballot boxes to be furnished each voting place; date of delivery; receipt for boxes.—The county board of elections shall furnish each precinct voting place with a ballot box for each kind of ballot to be voted in the primary or election, together with one additional box in which spoiled ballots are to be deposited. Each box shall be plainly marked to indicate the ballots to be deposited therein, and the extra box to be delivered to each precinct shall be marked "For Spoiled Ballots."

Each ballot box shall be designed so that it may be locked and sealed and shall be constructed with an opening in the top large enough to allow a single ballot to be easily passed through, but no larger. At the time ballot boxes are delivered to the precinct, the chairman of the county board of elections shall furnish each registrar with a lock and proper seals for each box to be used in his precinct, with instructions as to how each box is to be securely locked and sealed in compliance with § 163-171.

Three days before the primary or election, the county board of elections shall deliver to each precinct registrar the number of ballot boxes required for his precinct, and the registrar shall immediately give a receipt for them.

The provisions of this section shall not apply to voting places at which voting machines are used. (1929, c. 164, ss. 12, 14; 1931, c. 254, s. 11; 1967, c. 775, s. 1.)

§ 163-144. Lost, destroyed, damaged, and stolen ballots; replacement; report.—Should official ballots furnished to any precinct in accordance with the provisions of this chapter be lost, destroyed, damaged, or stolen, the county board of elections, upon ascertaining that a shortage of ballots exists in the precinct, shall furnish the needed replacement ballots.

Within three days after the primary or election, the registrar of the precinct in which the loss occurred shall make a written report, under oath, to the county board of elections describing in detail the circumstances of the loss, destruction, damage, or theft of the ballots. (1929, c. 164, s. 15; 1967, c. 775, s. 1.)

§ 163-145. Voting booths; description; provision.—The county board of elections shall furnish each voting place with at least one voting booth for each 100 persons qualified to vote in the precinct. Each voting booth shall be at least three feet square and six feet high; it shall have three sides and a door or curtain in front The bottom of the door or curtain shall hang two feet above the floor. Each voting booth shall be equipped with a table or shelf on which voters may conveniently mark their ballots.

The provisions of this section shall not apply to voting places at which voting machines are used. (1929, c. 164, s. 17; 1967, c. 775, s. 1.)

§ 163-146. Voting enclosure at voting place; furnishings; arrangement.—At each precinct voting place as described in § 163-129, there shall be a room or area set apart as the voting enclosure. The limits of the voting enclosure shall be defined by walls or guardrails which at no point stand nearer than 10 feet nor further than 20 feet from the ballot boxes or voting machines. This enclosure shall be arranged so that a single door or opening (not more than three feet wide) can be used as both the entrance and exit for persons seeking to vote.

Within the voting enclosure and in plain view of the qualified voters present at the voting place shall be placed:

(1) A table or desk on which the registrar shall place and use the precinct registration books and records.
(2) A table or desk on which the responsible judge shall place and superintend the ballots for distribution and the box for spoiled ballots.
(3) A table or desk on which the responsible judge shall place and maintain the pollbook.
(4) The ballot boxes.
(5) The voting booths.

All voting booths and ballot boxes shall be placed in plain view of the registrar and judges as well as of the qualified voters present at the voting place.

The registrar's table shall be placed near the entrance to the voting enclosure.

Each voting booth shall be located and arranged so that it is impossible for a voter in one booth to see a voter in another booth in the act of marking his ballots. Each voting booth shall be kept properly lighted and provided with pencils or pens for marking ballots.

In precincts in which voting machines are used, ballot boxes and voting booths shall not be used. Within the voting enclosure at the voting place in such a precinct, each machine shall be placed so that the exterior from all its sides is visible and so that whenever it is not in use by a voter the ballot labels on its face may be plainly seen by the precinct officials and assistants, and by watchers appointed under the provisions of § 163-45. Precinct election officials and assistants shall not place themselves, nor shall they permit any other person to place himself, in any position that will permit one to see or ascertain how a voter votes on a voting machine except when the voter obtains assistance as provided in this chapter.

No political banner, poster, or placard shall be allowed in or upon the voting place during the day of a primary or election. (1929, c. 164, s. 19; 1967, c. 775, s. 1.)

§ 163-147. No loitering or electioneering at voting place.—No person or group of persons shall, while the polls are open at the voting place on the day of the primary or election, loiter about, congregate, distribute campaign material, or do any electioneering within the voting place, or within 50 feet in any direction of the entrance or entrances to the building in which the voting place is located. Notwithstanding the above provision, if the voting place is located in a large building, the registrar and judges of the precinct may designate the entrance to the voting place within said building and none of the above activity shall be permitted within 50 feet of said entrance or entrances of said voting place. This section shall not, however, prohibit any candidate for nomination or election from visiting such voting place in person, provided he does not enter the voting enclosure except to cast his vote as a registered voter in said precinct. The county boards of elections and precinct registrars shall have full authority to enforce the provisions of this section. (1929, c. 164, s. 19; 1967, c. 775, s. 1; 1971, c. 537.)

Local Modification.—Cumberland, Durham, Franklin, Guilford, Vance and Warren: 1969, c. 1039.

Editor's Note. — The 1971 amendment rewrote the first sentence and added the remainder of the section.

Local Modification Held Invalid.—Session Laws 1969, c. 1039 is inoperable in

Cumberland, Franklin, Guilford and Vance Counties. Clayton v. North Carolina State Bd. of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).

Session Laws 1969, c. 1039, changed electioneering practices in the four counties covered by the Voting Rights Act in 1969 from what they had been on November 1, 1964. This change was a change in "standard, practice, or procedure with respect to voting" within the meaning of § 5 of the Voting Rights Act. Clayton v. North Carolina State Bd. of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).

There is no possible basis to explain, or any state of facts to justify, the difference in treatment between the counties to which Session Laws 1969, c. 1039 is applicable and the 94 which are governed by prior law. Therefore, Session Laws 1969, c. 1039, denies equal protection of the laws. Clayton v. North Carolina State Bd. of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).

The right to vote includes the right to be educated on the candidates and propositions for which a vote is to be cast. To increase the closest distribution points to the circumference of a circle having a 500 foot radius rather than the circumference of a circle having a 50 foot radius will result in a greatly increased burden on political parties and render more difficult the distribution of campaign literature to persons converging on the polling place. More importantly, distributions to far fewer voters will be accomplished under Session Laws 1969, c. 1039, than previously. Clayton v. North Carolina State Bd. of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).

§ 163-148. Procedures at voting place before polls are opened.—At least one half hour before the time set for opening the polls for each primary and election, the judges of elections, assistants, and, if allowed, official markers, shall meet the registrar at the precinct voting place, at which time the registrar shall administer to them the appropriate oaths set out in § 163-41(a), § 163-42, and § 163-44.

The registrar and judges shall arrange the voting enclosure according to the requirements of § 163-146 and the instructions of the county board of elections. They shall then unlock the official ballot boxes, see that they are empty, allow authorized watchers and other voters present to examine the boxes, and then they shall relock them while still empty. They shall open the sealed packages of ballots, and one of the judges, at the registrar's request, shall announce that the polls are open and state the hour at which they will be closed.

If voting machines are used in the precinct, immediately before the polls are opened the registrar and judges shall open each voting machine, examine the ballot labels, and check the counters to see that they are set to indicate that no votes have been cast or recorded; at the same time, the precinct officials shall allow authorized watchers and other voters present to examine the machines. If found to be in order and the ballot labels in proper form, the precinct officials shall lock and seal each machine, and it shall remain locked until after the polls are closed. (1929, c. 164, s. 18; 1967, c. 775, s. 1.)

§ 163-149. Protection of ballots, ballot boxes, pollbook, and registration records on day of primary or election.—When the empty official ballot boxes have been relocked after the inspection required by § 163-148 before the polls are opened on the day of each primary and election, they shall not be unlocked or opened until the polls are closed.

Only official ballots shall be allowed to be deposited in the ballot boxes, and no other articles or matter shall be placed in them.

No person shall purposely deface or tear an official ballot in any manner, and no person shall purposely erase any name or mark written on a ballot by a voter.

From the time the polls are opened until the precinct count has been completed, the returns signed, and the results declared, no person shall take or remove from the voting enclosure the official ballot boxes, the box for spoiled ballots, the pollbook, the registration book or records, or any official ballots. (1929, c. 164, ss. 18, 22, 23, 25; 1931, c. 254, s. 14; 1939, c. 263, s. 3½; 1953, c. 1040; 1967, c. 775, s. 1.)

§ 163-150. Voting procedures.—(a) Checking Registration.—A person seeking to vote shall enter the voting enclosure at the voting place through the appropriate entrance and shall at once state his name and place of residence to one of the judges of election. In a primary election, the voter shall also state the political party with which he affiliates and in whose primary he desires to vote. The judge to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the precinct registration records, the registrar shall state whether the person seeking to vote is duly registered.

(b) Distribution of Ballots; Information.—If the voter is found to be registered and is not challenged, or, if challenged and the challenge is overruled as provided in § 163-88, the responsible judge of election shall hand him an official ballot of each kind he is entitled to vote. In a primary election the voter shall be furnished ballots of the political party with which he affiliates and no others. It shall be the duty of the registrar and judges holding the primary or election to give any voter any information he desires in regard to the kinds of ballots he is entitled to vote and the names of the candidates on the ballots. In response to questions asked by the voter, the registrar and judges shall communicate to him any information necessary to enable him to mark his ballot as he desires.

(c) Act of Voting.—When a person is given official ballots by the judge, he shall be deemed to have begun the act of voting, and he shall not leave the voting enclosure until he has deposited his ballots in the ballot boxes or returned them to the precinct officials. When he leaves the voting enclosure, whether or not he has deposited his ballots in the ballot boxes, he shall not be entitled to enter the voting enclosure again for the purpose of voting. On receiving his ballots, the voter shall immediately retire alone to one of the voting booths unless he is entitled to assistance under the provisions of § 163-152, and without undue delay he shall mark his ballots in accordance with the provisions of § 163-151. No voter shall be allowed to occupy a booth already occupied by another, and no voter shall be allowed to occupy a booth more than five minutes if all the booths are in use and other voters are waiting to obtain booths.

(d) Spoiled and Damaged Ballots.—If a voter spoils or damages a ballot, he may obtain another upon returning the spoiled or damaged ballot to the registrar. A voter shall not be given a replacement ballot until he has returned the spoiled or damaged ballot, and he shall not be given more than three replacement ballots in all. The registrar shall deposit each spoiled or damaged ballot in the box provided for that purpose.

(e) Depositing Ballots and Leaving Enclosure.—When the voter has marked his ballots he shall leave the voting booth and deposit them in the appropriate boxes or hand them to the registrar or a judge who shall deposit them for him. If he does not mark a ballot he shall return it to one of the precinct officials before leaving the voting enclosure. If the voter has been challenged and the challenge has been overruled, before depositing his ballots in the boxes he shall write his name on each of his ballots so they may be identified in the event his right to vote is again questioned. After depositing his ballots in the ballot boxes, the voter shall immediately leave the voting enclosure unless he is one of the persons authorized by law to remain within the enclosure for purposes other than voting.

(f) Maintenance of Pollbook or Other Record of Voting.—At each primary and election, one of the judges designated by the registrar shall keep the pollbook in which he shall enter the name of every person who shall vote. In a primary election each voter's party affiliation shall be entered in the proper column of the book opposite his name. The judge shall make each entry at the time ballots are handed to the voter As soon as the polls are closed and the names of absentee voters have been entered as required by § 163-234, the registrar and judges of election shall sign the pollbook immediately beneath the last voter's name entered therein. The registrar or the judge appointed to attend the county canvass shall deliver the pollbook to the chairman of the county board of elections at the time of the county canvass, and the chairman shall remain responsible for its safekeeping.

In counties which adopt full-time and permanent registration, no pollbook shall be required; in lieu thereof, a permanent poll record shall be kept upon the registration certificates in a form approved by the county board of elections. (1915, c. 101, s. 11; 1917, c. 218; C. S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14; 1929, c. 164, ss. 20, 22, 23, 25; 1931 c. 254, ss. 13, 14; 1939, c. 263, s. 3½; 1953, c. 1040; 1955, c. 767; 1959, c. 1203, s. 7; 1967, c. 775, s. 1.)

Absence of Officer in Charge for a Short Time.—That one of the officers appointed to conduct an election was absent a short time from the polls, during which time no vote was cast and the ballot boxes were not tampered with, nor was any opportunity afforded for tampering with them, does not vitiate the election. State ex rel. DeBerry v. Nicholson, 102 N.C. 465, 9 S.E. 545 (1889).

Inquiry as to Voter's Qualifications Rests with Election Officials. — The law does not contemplate that a watcher or any other person may take charge when he challenges a voter at the polls and conduct a hearing with respect to the voter's right to vote. The inquiry with respect to the voter's qualifications to vote rests with the election officials. Overton v. Mayor & City Comm'rs, 253 N.C. 306, 116 S.E.2d 808 (1906).

Choice as to Voting.—The provisions of our State Constitution, Art. VI, § 5, making the distinction that the elector shall vote by ballot, and an election by the General Assembly shall be viva voce, gives under our statute, the elector the choice to deposit his own ballot secretly, or to declare his choice openly when depositing it, or to have the registrar, or one of the judges of election, deposit it for him. Jenkins v. State Bd. of Elections, 180 N.C. 169, 104 S.E. 346 (1920).

§ 163-151. Method of marking ballots in primary and election.—The voter shall adhere to the following rules in marking his ballots:

(1) In Both Primaries and Elections.—

a. A voter may designate his choice of candidate by making a cross (X) mark, a check mark, or some other clear indicative mark in the appropriate voting square or circle.

b. A voter should not mark more names for any office than there are positions to be filled by election.

c. A voter should not affix a sticker to a ballot, mark a ballot with a rubber stamp, attach anything to a ballot, wrap or fold anything in a ballot, or do anything to a ballot other than mark it properly with pencil or pen.

d. A voter should follow the instructions printed on the ballot.

(2) In An Election But Not in a Primary.—

a. If a voter desires to vote for all candidates of one political party (a straight ticket) he shall either:

1. Make a cross (X) mark in the circle printed below the name of the party at the top of the ballot; or

2. Make a cross (X) mark in the voting square at the left of the name of every candidate of the party printed on the ballot.

b. If a voter desires to vote for candidates of more than one political party (a split ticket), he shall not mark in the circle printed below the name of any party on the ballot; instead, he shall make a cross (X) mark in the voting square at the left of the name of each candidate for whom he desires to vote without regard to the party column in which the names are printed.

c. If a voter desires to vote for a person whose name is not printed on the ballot, he shall write the name of the person for whom he wishes to vote in the space immediately beneath the name of a candidate printed in the section of the ballot assigned to the particular office. In such a situation, the voter shall write the name himself unless he is receiving assistance to which he is entitled under the provisions of § 163-152, in which case the person rendering assistance may write the name for the voter under his direction.

d. In elections for county offices in Bertie County, in elections for municipal offices in the towns of Clayton in Johnston County, Elm City in Wilson County, Enfield in Halifax County, Fremont in Wayne County, Gaston in Northampton County, Roseboro in Sampson County, Snow Hill in Greene County, Tarboro in Edgecombe County, and Weldon in Halifax County, and in elections for municipal offices in all the municipalities in Bertie and Franklin counties, if there are multiple positions to be filled in a single office, the voter shall cast his vote for as many candidates as there are positions to be filled in that office.

(3) In a Primary.—

a. A voter should not write the name of any person on the official ballot.

b. In primary elections for county offices in the counties of

Bertie
Bladen
Catawba
Chowan
Columbus
Cumberland
Franklin
Greene
Halifax
Jones
Lenoir
Martin
Northampton
Onslow
Pender
Perquimans
Sampson
Surry, and
Wayne,

in primary elections for municipal offices in the municipalities in those counties, and in primary elections for municipal offices in the towns of Elm City in Wilson County, and Robersonville and Williamston in Martin County, if there are multiple positions to be filled in a single office, the voter shall cast his vote for as many candidates as there are positions to be filled in that office. (1929, c. 164, ss. 21, 28; 1931, c. 254, s. 15; 1933, c. 165, s. 23; 1939, c. 116, s. 2; 1947, c. 505, s. 10; 1955, c. 812, s. 2; c. 1104, ss. 1-2½; 1957, cc. 344, 440, 589, 647, 737, 1383; 1959, cc. 105, 604, 610, 888; c. 1203, ss. 8, 9; 1961, c. 451; 1963, cc. 154, 167, 376, 389, 390, 567, 774; 1965, cc. 119, 154, 547, 727; c. 1117, s. 3; 1967, c. 775, s. 1; c. 1016; 1969, cc. 190, 917, 1253; 1971, c. 807.)

Local Modification to Former § 163-175. —City of Washington: 1959, c. 847.

Editor's Note. — The 1967 amendment inserted "Martin" in the table of counties in paragraph b of subdivision (3).

The first 1969 amendment deleted "Hoke" and "Scotland" from the list of counties in paragraph b of subdivision (3).

The second 1969 amendment deleted "Duplin" from the table of counties in paragraph b of subdivision (3).

The third 1969 amendment inserted "Enfield in Halifax County" in paragraph d of subdivision (2).

The 1971 amendment deleted "Robeson" from the table of counties in paragraph b of subdivision (3).

Former § 163-175, subdivision (6), as it appeared prior to the revision of this chapter by Session Laws 1967, c. 775, provided as follows:

"Where there are group candidates for the same office printed on the ballot on any county or municipal primary held in this State, and the names of several candidates therefor appear on the ballot grouped under the office for which they are all running, the elector shall cast his or her vote for as many candidates as there are offices to be filled, and where an elector votes for any number of such group candidates less than the number of offices to be filled, such ballot shall not be counted for any of the group candidates for said offices. There shall be printed under the title of the offices for group candidates the number of candidates to be voted for."

The subdivision applied only to certain named counties and municipalities.

By Session Laws 1967, c. 276, the above-quoted subdivision was made applicable to all elections in the town of Hamilton in

Martin County; by Session Laws 1967, c. 688, it was made applicable to general municipal elections in the town of Eureka in Wayne County; and by Session Laws 1967, c. 811, it was made applicable to primary and general municipal elections in the city of Clinton in Sampson County.

Single Shot Voting Prohibition Regarding County Office Does Not Apply to North Carolina House of Representatives. —See opinion of Attorney General to Mr. Dixon McLean, Attorney for Robeson County Board of Elections, 3/19/70.

§ **163-152. Assistance to voters in primaries and elections.**—(a) In Primaries.—

(1) Who Is Entitled to Assistance: In a primary election, a registered voter qualified to vote in the primary shall be entitled to assistance in getting to and from the voting booth and in preparing his ballots in accordance with the following rules:

a. Any voter shall be entitled to assistance from a near relative of his choice.

b. If no near relative of the voter's choice is present at the voting place, a voter in any of the following three categories shall be entitled to assistance from any voter of the precinct who has not given aid to another voter at the same primary; or, if no such person be present at the voting place, from the registrar or one of the judges of election:

1. One who, on account of physical disability, is unable to enter the voting booth without assistance.
2. One who, on account of physical disability, is unable to mark his ballots without assistance.
3. One who, on account of illiteracy, is unable to mark his ballots without assistance.

(2) Procedure for Obtaining Assistance: A person seeking assistance in a primary shall, upon arriving at the voting place, first request the registrar to permit him to have assistance, stating his reasons. If the registrar determines that the voter is entitled to assistance, he shall ask the voter to point out and identify the near relative or other voter of the precinct he desires to help him and to whose assistance he is entitled under this section. The registrar shall thereupon direct the near relative or other voter indicated to render the requested aid. If no near relative or other voter of the voter's choice is present, the voter entitled to assistance may request and obtain aid from the registrar or one of the judges.

(b) In Elections.—

(1) In a County Which Has Not Adopted Full-Time and Permanent Registration:

a. Who is entitled to assistance: In any election other than primary, a registered voter shall be entitled to assistance in getting to and from the voting booth and in preparing his ballots in accordance with the following rules:

1. Any voter shall be entitled to assistance from a near relative of his choice.
2. A voter in any of the following four categories shall be entitled to assistance from a marker:

I. One who, on account of physical disability, is unable to enter the voting booth without assistance.

II. One who, on account of physical disability, is unable to mark his ballots without assistance.

III. One who, on account of illiteracy is unable to mark his ballots without assistance.

IV. One who, for any good reason stated to the registrar, desires help in marking his ballots.

b. Procedures for obtaining assistance: A person seeking assistance in an election other than a primary shall, upon arriving at the voting place, first request the registrar to permit him to have assistance, stating his reasons. If the registrar determines that the voter is entitled to assistance, he shall ask the voter to point out and identify the near relative or marker he desires to help him and to whose assistance he is entitled under this section. The registrar shall thereupon direct the near relative or marker indicated to render the requested aid. Should a voter seeking assistance from a marker fail to indicate the marker he desires to help him, the registrar shall appoint one from the markers present at the voting place to render the requested aid.

(2) In a County Which Has Adopted Full-Time and Permanent Registration:

a. Who is entitled to assistance: In any election other than a primary, a registered voter shall be entitled to assistance in getting to and from the voting booth and in preparing his ballots in accordance with the following rules:

1. Any voter shall be entitled to assistance from a near relative of his choice.
2. If no near relative of the voter's choice is present at the voting place, a voter in any of the following three categories shall be entitled to assistance from any voter of the precinct who has not given aid to another voter at the same election; or if no such person be present at the voting place, from the registrar or one of the judges of election:

I. One who, on account of physical disability, is unable to enter the voting booth without assistance.

II. One who, on account of physical disability, is unable to mark his ballots without assistance.

III. One who, on account of illiteracy, is unable to mark his ballots without assistance.

b. Procedure for obtaining assistance: A person seeking assistance in an election other than a primary shall, upon arriving at the voting place, first request the registrar to permit him to have assistance, stating his reasons. If the registrar determines that the voter is entitled to assistance, he shall ask the voter to point out and identify the near relative or other voter of the precinct he desires to help him and to whose assistance he is entitled under this section. The registrar shall thereupon direct the near relative or other voter indicated to render the requested aid. If no near relative or other voter of the voter's choice is present, the voter entitled to assistance may request and obtain aid from the registrar or one of the judges.

(c) Conduct of Persons Rendering Assistance.—Anyone rendering assistance to a voter in a primary or election under the provisions of this section shall be admitted to the voting booth with the person being assisted and shall be governed by the following rules:

(1) He shall not in any manner seek to persuade or induce any voter to cast his vote in any particular way.

(2) Except when going to or returning from a voting booth with a voter as authorized by this section, he shall remain within the voting place but shall not come within 10 feet of the voting enclosure.

(3) Immediately after rendering assistance, he shall vacate the voting booth and withdraw to his place in the voting place outside the voting enclosure.

(4) He shall not accompany the voter from the voting booth to the ballot box unless the voter requires and requests assistance on account of physical disability; if assistance is rendered in this way, he shall not converse with the voter prior to the time he deposits his ballots in the ballot boxes.

(5) He shall not make or keep any memorandum of anything which occurs within the voting booth.

(6) He shall not, directly or indirectly, reveal to any person how, in any particular, the assisted voter marked his ballots, unless he or they are called upon to testify in a judicial proceeding for a violation of the election laws.

(d) Meaning of "Near Relative".—As used in this section, the words "near relative" shall include the voter's husband, wife, brother, sister, parent, child, grandparent, and grandchild, but no other relative.

(e) Violation of Section.—It shall be unlawful for any person to give, receive, or permit assistance in the voting booth during any primary or election to any voter otherwise than as is allowed by this section. (1929, c. 164, ss. 26, 27; 1933, c. 165, s. 24; 1939, c. 352, ss. 1, 2; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 6; 1959, c. 616, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

Local Modification to Former §§ 163-172 and 163-173.—Brunswick: 1933, c. 164; 1935, c. 221; Cherokee: 1935, c. 461; 1937, c. 391; 1965, c. 737; 1967, c. 1000; Cumberland: 1937, c. 426; Sampson: 1941, c. 166.

Local Modification to Former § 163-174.—Cumberland, Wilson: 1939, c. 402.

Violations. — It was a violation of former § 163-172 for a judge of elections to mark the ballots for voters without any request for assistance by the voters, or, in the event of a request for assistance, to fail to return the marked ballot to the voter in order that the voter might see how it was marked before putting it in the ballot box. Overton v. Mayor & City Comm'rs, 253 N.C. 306, 116 S.E.2d 808 (1960).

§ 163-152.1. Assistance to blind voters in primaries and elections.—Any blind voter shall be permitted to select assistance of his own choosing in any primary or election without regard to residency within the voting precinct provided, such voter has recorded at the time of registration or prior to the date of the election, a certificate issued by the North Carolina State Commission for the Blind, by an optometrist or by a physician, stating that the named individual should be entitled to assistance as a blind voter. Upon receipt of such certification the registrar or special registration commissioner shall enter on the voter's registration record the words "blind voter" so as to establish such fact and so as to entitle such voter to the same assistance in subsequent primaries and elections whether such voter resides in a county with full-time registration or regular registration. The certification presented to the precinct registrar or special registrar shall be forwarded to the chairman of the county board of elections to be filed as a permanent record with the voter's duplicate registration record as required by G.S. 163-65. (1969, c. 175.)

§ 163-153. Access to voting enclosure.—Admission to the voting enclosure while the polls are open shall be governed by the following rules:

(1) In counties which have not adopted full-time and permanent registration, only the following persons shall be allowed within the voting enclosure while the polls are open for voting:

a. Officers of election, that is, members of the State Board of Elections, members of the county board of elections, and the precinct registrar, precinct judges of election, and assistants appointed for the precinct under the provisions of § 163-42.

b. Voters in the act of voting.

c. A near relative of a voter, but only while assisting the voter as authorized in § 163-152.

d. Watchers appointed under the provisions of § 163-45.

e. Municipal policemen assigned by the municipal authorities to keep the peace at a voting place located within the municipality, but only when requested to come within the voting enclosure by the registrar and judges for the purpose of preventing disorder; at the request of the registrar and judges, they shall withdraw from the voting enclosure and remain at least 10 feet from its entrance.

f. In elections other than primaries, markers appointed under the provisions of § 163-44, but only while assisting a voter as authorized in § 163-152.

g. In a primary election, any voter of the precinct called upon to assist another voter, but only while rendering the assistance authorized in § 163-152.

h. Any voter of the precinct while entering and explaining a challenge.

(2) In counties which adopt full-time and permanent registration, only the following persons shall be allowed within the voting enclosure while the polls are open for voting:

a. Officers of election, that is, members of the State Board of Elections, members of the county board of elections, and the precinct registrar, precinct judges of election, and assistants appointed for the precinct under the provisions of § 163-42.

b. Voters in the act of voting.

c. A near relative of a voter, but only while assisting the voter as authorized in § 163-152.

d. Any voter of the precinct called upon to assist another voter, but only while assisting him as authorized in § 163-152.

e. Municipal policemen assigned by the municipal authorities to keep the peace at a voting place located within the municipality, but only when requested to come within the voting enclosure by the registrar and judges for the purpose of preventing disorder; at the request of the registrar and judges, they shall withdraw from the voting enclosure and remain at least 10 feet from its entrance.

f. Any voter of the precinct while entering and explaining a challenge.

g. Watchers appointed under the provisions of G.S. 163-45. (1929, c. 164, s. 24; 1955, c. 871, s. 7; 1967, c. 775, s. 1; 1969, c. 1280, s. 1.)

Local Modification to Former § 163-170.—Cumberland: 1937, c. 426.

Editor's Note. — The 1969 amendment added paragraph g of subdivision (2). Section 3 of the amendatory act provides that the act shall not apply to Alamance, Beaufort, Cumberland, Dare, Gaston, Guilford, Hyde, Lenoir, Martin, Mecklenburg, Onslow, Randolph, Stanly, Tyrrell and Wayne counties.

§ 163-154. Posting lists of civilian and military absentee voters and new resident presidential election voters.—(a) In General Elections.—When delivered to the registrar at the voting place on the day of a general election as required by § 163-233, § 163-251, or § 163-73, the registrar shall immediately post in a conspicuous location at the voting place:

(1) The list (and any supplemental lists) of absentee ballots to be voted in the precinct which have been received by the chairman of the county board of elections.

(2) The list (and any supplemental lists) entitled "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued" prepared in compliance with the provisions of § 163-251.

(3) The list of new resident voters of the precinct entitled to cast ballots

for presidential electors but for no other offices prepared by the chairman of the county board of elections in compliance with the provisions of § 163-73.

(b) In Primary Elections.—When delivered to the registrar at the voting place on the day of a primary election, the registrar shall immediately post in a conspicuous place at the voting place the list (and any supplemental lists) entitled "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued" prepared by the chairman of the county board of elections in compliance with the provisions of § 163-251. (1939, c. 159, s. 7; 1943, c. 503, s. 4; c. 751, s. 4; 1963, c. 457, s. 7; 1965, c. 871; 1967, c. 775, s. 1.)

§ 163-155. Aged and disabled persons allowed to vote outside voting enclosure.—In any primary or election any qualified voter who is able to travel to the voting place, but because of age, or physical disability and physical barriers encountered at the voting place is unable to enter the voting place or enclosure to vote in person without physical assistance, shall be allowed to vote between the hours of 9:00 A.M. and 5:00 P.M. only either in the vehicle conveying such person to the voting place or in the immediate proximity of the voting place under the following restrictions:

(1) The county board of elections shall have printed and numbered a sufficient supply of affidavits to be distributed to each precinct registrar which shall be in the following form:

"Affidavit of person voting outside voting place or enclosure.

State of North Carolina
County of ....

I do solemnly swear (or affirm) that I am a registered voter in .... precinct. That because of age or physical disability I am unable to enter the voting place to vote in person without physical assistance. That I desire to vote outside the voting place and enclosure.

I understand that a false statement as to my condition will subject me to a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six months, or both.

....
Date Signature of voter

....
Address

....
Signature of assistant who administered oath."

(2) The registrar shall designate one of the assistants, appointed under G.S. 163-42 to attend the voter. Upon arrival outside the voting place, the voter shall execute the affidavit after being sworn by the assistant. The ballots shall then be delivered to the voter who shall mark the ballots and hand them to the assistant. The ballots shall then be delivered to one of the judges of elections who shall deposit the ballots in the proper boxes. The affidavit shall be delivered to the other judge of election.

(3) The voter shall be entitled to the same assistance in marking the ballots as is authorized by G.S. 163-152.

(4) The affidavit executed by the voter shall be retained by the county board of elections for a period of six months. In those precincts using voting machines, the county board of elections shall furnish paper ballots of each kind for use by persons authorized to vote outside the voting place by this section.

A violation of this section shall be a misdemeanor and upon conviction punished by a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six months, or both, in the discretion of the court. (1971, c. 746, s. 1.)

Editor's Note. — Session Laws 1971, c. 746, s. 2, makes the act effective July 1, 1971.

§§ 163-156 to 163-159: Reserved for future codification purposes.

ARTICLE 14.

Voting Machines.

§ 163-160. Voting machines; approval; rules and regulations.—The State Board of Elections shall have authority to approve types and kinds of voting machines for use in primaries and elections held in this State. The use of voting machines which have been approved by the State Board of Elections in any primary or election held in any county or municipality shall be as valid as the use of paper ballots by the voters.

The State Board of Elections shall prescribe rules and regulations for the adoption, handling, operation, and honest use of voting machines, including, but not limited to, rules and regulations governing:

(1) Types of voting machines approved for use in this State;
(2) Form of ballot labels to be used on voting machines;
(3) Operation of and manner of voting on voting machines;
(4) Instruction of precinct election officials in the use of voting machines;
(5) Instruction of voters in the use of voting machines;
(6) Assistance to voters using voting machines;
(7) Duties of custodians of voting machines; and
(8) Examination of voting machines before use in a primary election. (1949, c. 301; 1953, c. 1001; 1955, c. 1066, s. 1; 1967, c. 775, s. 1.)

Local Modification to Former § 163-187.4.—Forsyth: 1965, c. 732, s. 1.

§ 163-161. Adoption of voting machines by county or municipality.—(a) Discretionary Authority.—In whatever manner and upon whatever terms the board of county commissioners deems to be in the best interest of the county, it may adopt and purchase or lease voting machines of a type approved by the State Board of Elections for use in some or all voting places in the county at some or all primaries and elections. Specifically, the board may purchase voting machines upon an installment basis or otherwise, or it may lease voting machines with or without an option to purchase.

The governing body of any municipality shall have the same authority with respect to the acquisition and use of voting machines for municipal primaries and elections.

In addition, the governing body of any municipality and the board of commissioners of the county in which the municipality is situated shall have authority, jointly, upon such terms as they may agree to, to adopt and purchase or lease voting machines for use in some or all voting places of the county and municipality at some or all primaries and elections held in the two units of government.

Before adopting or acquiring voting machines under the authority of this subsection, the commissioners of the county, or the governing body of the municipality, or both jointly, may, at their discretion, submit to the voters of the county, or the municipality, or of both units, the question of whether voting machines should be adopted for use in primaries and elections in the unit or units. The question may be submitted at any general election or special election ordered to be held for some purpose other than the submission of this issue. The results of the referendum authorized under this subsection shall be advisory only and shall not bind the governing body submitting the question.

(b) Referendum Discretionary Upon Petition.—Upon receipt of a written petition signed by at least 500 registered voters of the county or municipality, the board of county commissioners or municipal governing body may submit to the voters of the county or municipality the question of adopting voting machines for use in all voting places of the county or municipality at all primaries and elections held in the unit. In such a case, each person signing the petition shall write the name or number of his precinct after his name.

The question may be submitted at any general election or special election ordered or held for some purpose other than the submission of this issue. If a majority of the voters casting ballots in the referendum approve the adoption of voting machines, the board of county commissioners or the governing body of the municipality, may adopt for use in primaries and elections in the unit voting machines of a type or kind approved by the State Board of Elections.

(c) Care and Custody of Voting Machines.—When the unit governing body has decided to adopt and purchase voting machines under the provisions of subsection (a) of this section, or when the adoption of voting machines has been approved in a referendum conducted under the provisions of subsection (b) of this section, the board of county commissioners or municipal governing body shall, as soon as practical, provide for each voting place in the unit one or more approved voting machines in complete working order. If it is impractical to furnish each voting place with voting machines, those obtained may be placed in voting places chosen, in the case of a county, by the county board of elections, and in the case of a municipality, by the governing body.

The county board of elections or the municipal governing body shall appoint as many voting machine custodians as may be necessary for the proper preparation of the machines for each primary and election and for their maintenance, storage, and care. (1949, c. 301; 1953, c. 1001; 1955, c. 1066, s. 1; 1967, c. 775, s. 1.)

§ **163-162. Use of paper ballots where voting machines used.** — In counties in which voting machines are used in some or all precincts the county board of elections shall have authority to furnish paper ballots of each kind to precincts using voting machines for use by persons required to sign their ballots under the provisions of G.S. 163-150 (e). (1967, c 775, s. 1.)

§§ **163-163 to 163-167**: Reserved for future codification purposes.

ARTICLE 15.

Counting Ballots, Canvassing Votes, and Certifying Results in Precinct and County.

§ **163-168. Proceedings when polls are closed.**—At 6:30 P. M., on the day of an election or primary, the precinct registrar shall announce that the polls are closed, but any qualified voters who are then in the process of voting or who are in line within the voting enclosure waiting to vote, shall be allowed to mark and cast their ballots. (1933, c. 165, s. 8; 1955, c. 891; 1961, c. 487; 1967, c. 775, s. 1.)

§ **163-169. Counting ballots at precincts; unofficial report of precinct vote to county board of elections.**—(a) Instructions.—Before each primary and election, the chairman of the county board of elections shall furnish each registrar written instructions on how ballots shall be marked and counted. Before starting the counting of ballots in his precinct, the registrar shall instruct all of the judges, assistants, and ballot counters in how differently marked ballots shall be counted and tallied.

(b) General Rule.—Only official ballots shall be counted. No ballot shall be counted which is marked contrary to law, but no ballot shall be rejected for a technical error unless it is impossible to determine the voter's choice.

(c) Right to Witness Precinct Count.—The counting of the ballots in each box shall be made in the presence of the precinct election officials and witnesses and watchers who are present and desire to observe the count. Observers shall not interfere with the orderly counting of the ballots.

(d) Counting to Be Continuous; Precinct Officials Not to Separate.—As soon as the polls are closed the registrar and judges shall, without adjournment or postponement, open the ballot boxes and count the ballots. The counting of ballots at the precinct shall be continuous until completed. More than one box may be counted at the same time by the precinct officials, assistants, and ballot counters, but the registrar and judges shall supervise the counting of all boxes and shall be responsible for them. From the time the first ballot box is opened and the count of votes begun until the votes are counted and the statement of returns made out, signed, certified as required by § 163-173, and delivered to the registrar or judge chosen to deliver them to the county board of elections, the precinct registrar and judges shall not separate, nor shall any one of them leave the voting place except for unavoidable necessity.

(e) Counting Primary Ballots.—In a primary election only one ballot shall be removed from the ballot box at a time, and it shall be opened in full view of the precinct election officals and witnesses present. The name of each candidate voted for shall be read aloud distinctly, and the vote received by each candidate shall be tallied on the tally sheet. This procedure shall be followed for all ballot boxes being counted at the same time.

(f) Counting General Election Ballots.—In a general election the contents of a ballot box may be emptied upon a table and the ballots divided into two piles:

(1) All those ballots marked in the circle of one political party to indicate a vote for all of the candidates of that party, that is, "straight tickets," which shall be so counted and tallied.

(2) All those ballots marked for candidates of more than one political party, that is, "split tickets," which shall be called and tallied in the manner prescribed for counting primary ballots in subsection (e) of this section.

(g) Questioned Ballots.—All questions arising with respect to how a ballot shall be counted or tallied shall be referred to the registrar and judges of election for determination before the completion of the counting of the ballots in the box from which the questioned ballot was taken.

(h) Unofficial Report of Precinct Returns.—On the night of the primary or election, as soon as the votes have been counted and the precinct returns certified, the registrar, or one of the judges selected by the registrar, shall report the total precinct vote for each candidate, constitutional amendment, and proposition by telephone or otherwise to the county board of elections. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow. As soon as the precinct reports are received, the chairman, secretary, or clerk to the county board of elections shall publish the reports to the press, radio, and television. The costs incurred in executing the provisions of this subsection shall be charged to the operating expense of the county board of elections.

(i) Absentee Ballots.—Absentee ballots shall be deposited and voted in accordance with the provisions of § 163-234; they shall be counted and tabulated as provided in this section and § 163-170.

(j) Presidential Ballots of New Resident Voters.—The ballots of all new resident voters cast for presidential electors under the provisions of § 163-56 and § 163-73 which are not challenged, or, if the challenge is not sustained, shall be counted and tallied in the manner provided in subsection (i) of this section for counting and tallying absentee ballots, and shall be made a part of the official precinct returns for presidential electors. (1933, c. 165. s. 8; 1953, c. 843; 1955, cc. 800, 891; 1961, c. 487; 1963, c. 303, s. 1; 1965, c. 871; 1967, c. 775, s. 1.)

Counting by Others than Officers of Election.—While it is irregular to permit other persons than the officers of election to count the ballots, yet, unless it appears affirmatively that the count was not correct, that fact will not be allowed to vitiate the election, especially when the judges accepted and certified the result thus ascertained as true. State v. Calvert, 98 N.C. 580 4 S.E. 127 (1887).

§ **163-170. Rules for counting ballots.**—No ballot shall be counted which is marked contrary to law, but no ballot shall be rejected for a technical error unless it is impossible to determine the voter's choice. In applying this general principle, all election officials shall be governed by the following rules:

(1) Only official ballots shall be counted.

(2) If for any reason it is impossible to determine a voter's choice for an office to be filled, the ballot shall not be counted for that office but shall be counted for all other offices.

(3) If a ballot is marked for more names than there are persons to be elected to an office, it shall not be counted for that office but shall be counted for all other offices.

(4) If a ballot has been defaced or torn by a voter it shall not be counted.

(5) If a voter has affixed a sticker to a ballot, marked a ballot with a rubber stamp, attached anything to a ballot, wrapped or folded anything in a ballot, or done anything to a ballot other than mark it properly with pencil or pen, it shall not be counted.

(6) If a name has been written in on an official general election ballot as provided in § 163-151 (2), it shall be counted in accordance with the following instructions:

  a. If the name was written in by an election official or by any person other than the voter himself or a person assisting him pursuant to the provisions of § 163-152, the name written in shall not be counted.

  b. If the name has been written in the space immediately beneath the name of a candidate for a particular office, it shall be counted as a vote for the person whose name has been written in for that office whether or not the voter has made any mark to the left of the name inserted. Striking out, marking through, or crossing out the name printed above the write-in shall not affect the validity of the write-in, nor shall it serve to invalidate the ballot or the vote for the particular office.

  c. If the voter has marked the party circle above the column in which he has entered the write-in, the following instructions apply:

    1. If the voter has made no mark to the left of the name written in, his ballot shall be counted as a vote for the person whose name has been inserted and for all other nominees of the party in whose circle he has marked except the one beneath whose printed name the voter has made the write-in: Provided, however, if the person whose name has been written in appears on the ballot as the nominee of a different political party for any office, the write-in shall be ignored, and the ballot shall be counted as a vote for all the nominees of the party in whose circle the voter has marked.

    2. If the voter has made a mark to the left of a name written in, his write-in shall be ignored, and his ballot shall

be counted as a vote for all the nominees of the party in whose circle the voter has marked.

d. If the voter has marked the party circle at the top of one column on the ballot and has made a write-in under a name printed in in a different column, the write-in shall be ignored, and his ballot shall be counted as a vote for all the nominees of the party in whose circle he has marked.

(7) In an election other than a primary, if a voter in one of the counties or municipalities listed in paragraph d of § 163-151 (2) fails to adhere to the instructions set out in that paragraph, his ballot shall not be counted for any of the candidates for any of the multiple positions to be filled in the single office.

(8) In a primary election, if a voter in one of the counties or municipalities listed in paragraph b or § 163-151 (3) fails to adhere to the instructions set out in that paragraph, his ballot shall not be counted for any of the candidates for any of the multiple positions to be filled in the single office. (1929, c. 164, s. 28; 1931, c. 254, s. 15; 1933, c. 165, ss. 8, 23; 1939, c. 116, s. 2; 1947, c. 505, s. 10; 1955, c. 812, s. 2; c. 891; c. 1104, ss. 1-2½; 1957, cc. 344, 440, 589, 647, 737, 1383; 1959, cc. 105, 604, 610, 888; c. 1203, s. 9; 1961, cc. 451, 487; 1963, cc. 154, 167, 376, 389, 390, 567, 774; 1965, cc. 119, 154, 547, 727; c. 1117, s. 3; 1967, c. 775, s. 1.)

Effect of Voting for Too Many Candidates.—The statute does not contemplate throwing out the whole ballot for voting one ticket for too many candidates, its language distinguishing between the ballot and the ticket, of several of which (each office voted for being a separate ticket on the same ballot) the ballot is made up. Hence a ballot for one claiming the office of register of deeds, thrown out because containing two unmarked names, instead of one, for the office of recorder of the county, was improperly rejected as a vote for register, the elector's choice for such office being properly indicated. Bray v. Baxter, 171 N.C. 6, 86 S.E. 163 (1915).

A ballot the only defect of which was that it contained unmarked names of four persons for the office of county commissioner, while only three commissioners were to be elected, was improperly rejected. Bray v. Baxter, 171 N.C. 6, 86 S.E. 163 (1915).

Two Candidates with Same Name—Evidence of Identification. — If there be two candidates for different offices having the same name, and a ticket be found in the ballot box having that name and no other on it, it may be proved by extrinsic evidence for which of the candidates it was given. Wilson v. Peterson, 69 N.C. 113 (1873).

§ 163-171. Preservation of ballots; locking and sealing ballot boxes; signing certificates.—When the precinct count is completed after a primary or election, all ballots shall be put back in the ballot boxes from which they were taken, and the registrar and judges shall promptly lock and place a seal around the top of each ballot box, so that no ballot may be taken from or put in it. The registrar and judges shall then sign the seal on each ballot box.

Ballot boxes in which ballots have been placed and which have been locked and sealed as required by the preceding paragraph shall remain in the safe custody of the registrar, subject to the orders of the chairman of the county board of elections as to their disposition. No ballot box shall be opened except upon the written order of the county board of elections or upon a proper order of court.

Ballots cast in a primary or general election shall be preserved for at least two months after the primary or general election in which voted.

On each precinct return form there shall be printed a statement to be signed by the registrar and judges certifying that, after the precinct count was completed, each ballot box was properly locked, sealed, and the seals signed, as prescribed in this section, before the precinct officials left the voting place on the night of the primary or election.

Wilful failure to securely lock, seal, and sign the seal on each ballot box on the night of any primary or election, and wilful failure to sign the certificate on the duplicate return forms certifying that this was done, shall constitute a misdemeanor. (1915, c. 101, s. 21; 1917, c. 179, s. 1; c. 218; C. S., s. 6041; 1923, c. 111, s. 15; 1959, c. 1203, s. 2; 1967, c. 775, s. 1.)

§ 163-172. State Board of Elections to prepare and distribute abstract forms.—The State Board of Elections shall prepare and print appropriate abstract of returns forms and, at least 30 days before the time for holding any primary or election, send copies of them to the chairman of the county board of elections and clerk of superior court of each county. At the same time, the State Board of Elections shall furnish directions for completing, certifying, signing, and transmitting abstracts of returns to the State Board of Elections and Secretary of State as required by this chapter after each primary and election. (1967, c. 775, s. 1.)

§ 163-173. How precinct returns are to be made.—In each precinct, when the results of the counting of the ballots have been ascertained they shall be recorded in original and duplicate statements to be prepared, signed, and certified to by the registrar and judges on forms provided by the county board of elections.

One of the statements of the voting in the precincts shall be placed in a sealed envelope and delivered to the registrar or a judge selected by the precinct officials for the purpose of delivery to the county board of elections at its meeting on the second day after the primary or election. The other copy of the statement shall be mailed immediately to the chairman of the county board of elections by one of the other two precinct election officials.

Any registrar or judge appointed to deliver the certified precinct returns who shall fail to deliver them to the county board of elections by 12:00 noon, on the day the board meets to canvass the returns shall be guilty of a misdemeanor, unless the failure resulted from illness or other good cause. (1933, c. 165, s. 8; 1967, c. 775, s. 1.)

Returns Admissible as Substantive Evidence.—See State v. Ponder, 234 N.C. 294, 67 S.E.2d 292 (1951).

§ 163-174. Registration and poll books to be returned to chairman of county board of elections.—On the day of the county canvass following each primary and election, the registrar (or judge appointed to bring in the precinct returns) shall deliver the precinct registration book or records and the poll book to the chairman of the county board of elections. (1933, c. 165, s. 8; 1967, c. 775, s. 1.)

§ 163-175. County board of elections to canvass returns and declare results.—On the second day (Sunday excepted) next after every primary and election, the county board of elections shall meet at 11:00 A. M., at the county courthouse, for the purpose of canvassing the votes cast in the county and preparing the county abstracts. If the returns from any precinct have not been received by the county board by 12:00 noon, on that day, or if the returns of any precinct are incomplete or defective, the board shall have authority to dispatch a peace officer to the residences of the election officials of the delinquent precinct for the purpose of securing proper returns for that precinct.

In the presence of such persons as choose to attend, the members of the county board of elections shall open the precinct returns, canvass and judicially determine the results of the voting in the county, and prepare and sign duplicate abstracts showing:

(1) In a primary, the total number of votes cast in each precinct and in the county for each candidate of each political party for each office.

(2) In an election, the number of legal votes cast in each precinct for each

candidate, the name of each person voted for, the political party with which he is affiliated, and the total number of votes cast in the county for each person for each different office.

In complying with the provisions of this section, the county board of elections shall have power and authority to judicially pass upon all facts relative to the primary or election, to make or order such recounts as it deems necessary, and to judicially determine the result of the primary or election. The board shall also have power to send for papers and persons and to examine them, and to pass upon the legality of any disputed ballots transmitted to it by any precinct election official.

When, on account of errors in tabulating returns and filling out abstracts, the result of a primary or election in any one or more precincts cannot be accurately known, the county board of elections shall be allowed access to the ballot boxes in such precincts to make or order a recount and to declare the result.

When the county board of elections has judicially determined the result of the primary or election, the chairman of the board shall proclaim the result at the courthouse door, stating the number of votes cast in the county for each candidate for each office. (1915, c. 101, s. 27; 1917, c. 218; C. S., s. 6048; 1933, c. 165, s. 8; 1957, c. 1263; 1966, Ex. Sess., c. 5, s. 4; 1967, c. 775, s. 1.)

Local Modification to Former § 163-143.—Brunswick: 1951, c. 462; Halifax: 1951, c. 462.

County Board of Elections Canvasses Primary Returns for County Offices.—A county board of elections is the proper agency to canvass the returns in a primary for the selection of party nominees for county offices as well as in a general election to fill such offices. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Judicial Powers of County Board.—The county board of canvassers (now the county board of elections) are vested with statutory authority to judicially pass upon all facts relative to the election and to judicially determine and declare the results, and with the exercise of this discretion the courts will not interfere, except in an action to try title to the office by quo warranto. However, since by the federal Constitution, Art. I, § 5, power is given to both houses of Congress to pass upon the election of members, an action in the nature of quo warranto cannot be brought to determine which candidate was elected to Congress. Britt v. Board of Canvassers, 172 N.C. 797, 90 S.E. 1005 (1916).

The returns made by the precinct officials constitute but a preliminary step in ascertaining the results of an election, and such returns must be canvassed and declared by the board of canvassers (now the board of elections) as an essential part of the election machinery. State v. Proctor, 221 N.C. 161, 19 S.E.2d 234 (1942).

Correction of Tabulations by Registrar and Judges of Election.—In a primary for county officers the registrar and judges of election may correct their tabulation of the results to the county board of elections before the latter has judicially determined the results; the duties of the latter board being continuous, under the provisions of the statute, and such powers not being functus officio until they have finally determined the results of the election. Bell v. County Bd. of Elections, 188 N.C. 311, 124 S.E. 311 (1924).

Supplementary Returns after Adjournments of Registrar and Judges. — Additional or supplemental returns made up by the county board of canvassers (now the county board of elections) after the registrar and poll holders (now the registrar and judges) had fully performed their duties and adjourned, and without calling them together for reconsideration as a body, should not be given effect by the courts. Britt v. Board of Canvassers, 172 N.C. 797, 90 S.E. 1005 (1916).

Access to Ballot Boxes.—Former § 163-143, similar to the next-to-last paragraph of this section, applied only "when, on account of errors in tabulating returns or filling out blanks," the result of the election could not be accurately known, and conferred no authority on the courts to investigate and pass upon the methods or manner in which the primary might have been conducted. Brown v. Costen, 176 N.C. 63, 96 S.E. 659 (1918).

Result as Declared by Board Prima Facie Correct.—In proceedings in the nature of a quo warranto, to determine the respective rights of the parties contesting for an office, the result of the election, as declared by the county board of canvassers (now the county board of elections), must be taken as prima facie correct. State ex rel. Robertson v. Jackson, 183 N.C. 695, 110 S.E. 593 (1922).

The finding by the board of canvassers (now the county board of elections) as to the number of votes received by a contestant in an election is prima facie correct. State ex rel. Jones v. Flynt, 159 N.C. 87, 74 S.E. 817 (1912).

There is a final and conclusive presumption in favor of the correctness of the result of an election as declared by the proper officials, until the issues raised by the pleadings have been tried and disposed of before the jury. Wallace v. Salisbury, 147 N.C. 58, 60 S.E. 713 (1908).

Same—Subject to Collateral Attack. — The decisions or judgments of the county board of canvassers (now the county board of elections) are not of such conclusiveness or finality as to exclude collateral attack, and the use of the word "judicially" in the statute does not affect the construction. State ex rel. Barnett v. Midgett, 151 N.C. 1, 65 S.E. 441 (1909).

The correctness of the result of the election of a clerk of the superior court, determined and declared by the county board of canvassers (now the county board of elections), can be investigated, passed upon and determined in a civil action in the nature of a quo warranto, and such is the proper remedy. State ex rel. Barnett v. Midgett, 151 N.C. 1, 65 S.E. 441 (1909)

Jurisdiction of Superior Court for Quo Warranto Not Ousted. — The act of the county canvassers (now the county board of elections) in declaring the result of an election to public office cannot have the effect of ousting the jurisdiction of the superior court in quo warranto or information in the nature thereof. Harkrader v. Lawrence 190 N.C. 441, 130 S.E. 35 (1925).

Mandamus to Reconvene Board.—As to whether a board of canvassers (now county board of elections) can be compelled by mandamus to reconvene after its final adjournment, quaere, semble, it can be done theretofore only for the purpose of requiring it to complete its labors, but not to reconsider its action. Britt v. Board of Canvassers, 172 N.C. 797, 90 S.E. 1005 (1916).

Mandamus by Candidate. — Where the county board of elections has assumed to pass upon the qualifications of the electors voting in a primary for the selection of a party candidate for a county office, and in so doing has declared certain of the electors disqualified, and has accordingly changed its returns and declared the one appearing to have received a smaller vote, the choice of the party as a candidate, an action will lie by the one appearing to have received the larger vote, against the county board, to compel them, by mandamus, to tabulate the returns made by the registrars and judges of the precinct, and then to publish and declare the same as the result of the election. Rowland v. Board of Elections, 184 N.C. 78, 113 S.E. 629 (1922).

Recounts.—Where a candidate in a primary election, prior to the time fixed for the county board of elections to canvass the returns, suggests errors in tabulating ballots in certain precincts because persons not legally qualified acted as counters and tabulators, but makes no assertion that any person voted who was not entitled to vote or that any qualified elector was prevented from voting, and files a written request for recount, the county board has authority, in the exercise of its judgment and discretion in good faith, to order and conduct a recount of the ballots cast and to certify the candidate having the majority of the votes as ascertained by such recount as the nominee of the party, notwithstanding that the returns of the precinct officials are regular upon their face. Strickland v. Hill, 253 N.C. 198, 116 S.E.2d 463 (1960).

§ 163-176. Preparation of original abstracts; where filed.—When the county canvass has been completed, the county board of elections shall record the results determined in accordance with § 163-175 on duplicate abstract forms furnished by the State Board of Elections.

Each abstract shall be prepared to show the total number of votes cast for each constitutional amendment and proposition and for each candidate of each political party for each office in each precinct and in the entire county.

When the original and two duplicate abstracts have been prepared, the members of the county board of elections shall sign an affidavit on each, stating that it is true and correct.

Each of the original abstracts, together with the original precinct returns, shall be filed by the county board of elections with the clerk of superior court to be recorded in the permanent file in his office. (1933, c. 165, s. 8; 1967, c. 775, s. 1; 1969, c. 971, s. 1.)

Editor's Note. — The 1969 amendment inserted "two" near the beginning of the third paragraph.

Abstract Admissible as Substantive Evidence.—See State v. Ponder, 234 N.C. 294, 67 S.E.2d 292 (1951).

§ **163-177. Disposition of duplicate abstracts.**—Within five days after a primary or election is held, the chairman of the county board of elections shall mail to the chairman of the State Board of Elections the duplicate abstracts prepared in accordance with § 163-176 for all offices and referenda for which the State Board of Elections is required to canvass the votes and declare the results, including:

President and Vice-President of the United States
Governor, Lieutenant Governor, and all other State executive officers
United States Senators
Members of the House of Representatives of the United States Congress
Justices, Judges, and Solicitors of the General Court of Justice
State Senators in multi-county senatorial districts
Members of the State House of Representatives in multi-county representative districts
Constitutional amendments and other propositions submitted to the voters of the State.

One duplicate abstract prepared in accordance with § 163-176 for all offices and referenda for which the county board of elections is required to canvass the votes and declare the results (and which are listed below) shall be retained by the county board, which shall forthwith publish and declare the results; the second duplicate abstract shall be mailed to the chairman of the State Board of Elections, to the end that there be one set of all primary and election returns available at the seat of government.

All county offices
All township offices
State Senators in single-county senatorial districts
Members of the State House of Representatives in single-county representative districts
Propositions submitted to the voters of one county

If the chairman of the county board of elections fails or neglects to transmit duplicate abstracts to the chairman of the State Board of Elections within the time prescribed in this section, he shall be guilty of a misdemeanor and subject to a fine of one thousand dollars ($1,000.00): Provided, that the penalty shall not apply if the chairman was prevented from performing the prescribed duty because of sickness or other unavoidable delay, but the burden of proof shall be on the chairman to show that his failure to perform was due to sickness or unavoidable delay. (1933, c. 165, s. 8; 1966, Ex. Sess., c. 5, s. 3; 1967, c. 775, s. 1; 1969, c. 44, s. 86; c. 971, s. 2.)

Editor's Note.—The first 1969 amendment inserted "Justices, Judges, and Solicitors of the General Court of Justice" in the list following the first colon in the section and deleted therefrom "Justices of the Supreme Court," "Judges of the superior courts," "Judges of the district courts" and "Solicitors."

The second 1969 amendment rewrote the provisions as to disposition of the duplicate abstracts prepared in accordance with § 163-176 so as to provide for retention of one duplicate abstract by the county board and mailing of the second to the State Board of Elections.

§ **163-178. Clerk of superior court to send statement of votes to Secretary of State.**—In a general election, the clerk of the superior court shall, within two days after the original abstracts are filed in his office by the county board of elections, certify under his official seal to the Secretary of State, upon forms furnished him by the State Board of Elections for that purpose, a statement of the votes cast in his county for all national, State, and district offices, and for and against constitutional amendments and propositions submitted to the people. At the same time, the clerk of superior court shall also certify under his official seal to the Secretary of State a list of all the persons voted for in his county as members of the State Senate and House of Representatives and all county offices, together with the votes cast for each and their post-office addresses.

If the clerk of superior court fails or neglects to transmit these returns to the Secretary of State within the time specified in this section, he shall be guilty of a misdemeanor and subject to a fine of five hundred dollars ($500.00): Provided, that the penalty shall not apply when the clerk was prevented from performing his duties because of sickness or other unavoidable delay, but the burden of proof shall be on the clerk to show that his failure to perform his duties was due to sickness or unavoidable delay.

The provisions of this section, unless changed by general rules promulgated by the State Board of Elections, shall also apply to primary elections. (1933, c. 165, s. 8; 1967, c. 775, s. 1.)

§ 163-179. Who declared elected by county board.—In a general election, the person having the greatest number of legal votes for a county or township office, or for membership in one of the houses of the General Assembly in a representative or senatorial district composed of only one county, shall be declared elected by the county board of election: Provided, however, that as a prerequisite to election, a write-in candidate for any office must receive as many as five percent (5%) of the votes cast for candidates for the United States House of Representatives in the township or county or other jurisdiction in which he is running.

If two or more candidates in the categories listed in this section, having the greatest number of votes, shall have an equal number, the county board of elections shall determine by lot which shall be elected. (1933, c. 165, s. 8; 1957, c. 1263; 1966, Ex. Sess., c. 5, s. 4; 1967, c. 775, s. 1.)

§ 163-180. Chairman of county board of elections to furnish certificate of election.—Not earlier than five days nor later than 10 days after the results of an election have been officially determined and published in accordance with § 163-175 and § 163-179, the chairman of the county board of elections shall furnish to each of the following persons appropriate certificates of election under his hand and seal: County officers, township officers, and persons elected to membership in the General Assembly in representative and senatorial districts composed of only one county. He shall also immediately notify all persons elected to county offices to meet at the courthouse on the first Monday in the ensuing December to be qualified.

In issuing certificates of election under this section, the chairman of the county board of elections shall be restricted by the provisions of § 163-181. (1933, c. 165, s. 8; 1947, c. 505, s. 4; 1955, c. 871, s. 5; 1959, c. 1203, s. 3; 1966, Ex. Sess., c. 5, s. 5; 1967, c. 775, s. 1.)

Conclusiveness of Adjudication of Board and Certificate of Election.—The adjudication of the board and the resultant certificate of election constitute conclusive evidence of the certificate holder's right to the office in every proceeding except a direct proceeding under § 1-514 et seq. to try the title to the office. State v. Ponder, 234 N.C. 294, 67 S.E.2d 292 (1951).

§ 163-181. Election contest stays certification of nomination or election.—If an election contest is properly pending before a county board of elections or on appeal from a county board to the State Board of Elections, after either a primary or election, the chairman of the county board of elections shall not, in the case of an election, issue a certificate of election, or in the case of a primary, certify the nominee, for the office in controversy until the contest has been finally decided by the county or State Board of Elections (1933, c. 165, s. 8; 1947, c. 505, s. 4; 1955, c. 871, s. 5; 1959, c. 1203, s. 3; 1966, Ex. Sess., c. 5, s. 5; 1967, c. 775, s. 1.)

§§ 163-182 to 163-186: Reserved for future codification purposes.

Article 16.

Canvass of Returns for Higher Offices and Preparation of State Abstracts.

§ 163-187. State Board of Elections to canvass returns for higher offices.—In addition to the other powers and duties assigned it by this chapter, the State Board of Elections shall constitute the State's legal canvassing board in both primaries and elections for all national, State, and district offices (including the offices of State Senator and member of the State House of Representatives in those senatorial and representative districts consisting of more than one county).

No member of the State Board of Elections shall take part in canvassing the votes for any office for which he himself is a candidate. (1933, c. 165, s. 9; 1966, Ex. Sess., c. 5, s. 6; 1967, c. 775, s. 1.)

Supervisory Powers of Board. — The State Board of Elections has general supervision over the primaries and elections in the State, with authority to promulgate legally consistent rules and regulations for their conduct, and to compel the observance of the election laws by county boards of elections, and the duty of the State Board to canvass returns and declare the count does not affect its supervisory power, which perforce must be exercised prior to the final acceptance of the returns made by the county boards. Burgin v. North Carolina State Bd. of Elections, 214 N.C. 140, 198 S.E. 592 (1938).

The fact that, after the returns are in, the State Board of Elections is to canvass the returns and determine whom they ascertain and declare by the count to be nominated or elected is not to be construed as a denial or negation of its supervisory powers, which perforce are to be exercised prior to the final acceptance of the several returns. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

State, Not County, Board Canvasses Primary Returns in Multi-County Senatorial District.—The State Board of Elections is the appropriate agency to canvass and judicially declare the results of a primary for the nomination of a candidate in a senatorial district composed of more than one county. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

A county board of elections in a multiple county senatorial district has no power to canvass the primary election returns and determine judicially the nominee in such district; that power is vested exclusively in the State Board of Elections. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Control of Powers by Courts. — The courts will not undertake to control the State Board in the exercise of its duty of general supervision so long as such supervision conforms to the rudiments of fair play and the statutes on the subject. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

When the State Board of Elections obtains jurisdiction of an election protest upon an appeal from a single county in a multiple county senatorial district, or by the filing in apt time of a protest directly with the State Board of Elections, its decision can only be reviewed in the manner prescribed by § 143-306 et seq. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

§ 163-188. Meeting of State Board of Elections to canvass returns of primary and election.—Following each primary and election held in this State under the provisions of this chapter, the State Board of Elections shall meet in the Hall of the House of Representatives in the city of Raleigh to canvass the votes cast in all the counties of the State for all national, State, and district offices, to determine by the count who is nominated or elected to the respective offices, and to declare the results and prepare abstracts as required by § 163-192. The time and date of the general election canvass shall be 11:00 A.M., on the Tuesday following the third Monday after the general election. The time and date of the primary canvass shall be fixed by the State Board of Elections.

At the meeting required by the preceding paragraph, if the abstracts of returns have not been received from all of the counties, the Board may adjourn for not more than 10 days for the purpose of securing the missing abstracts. In obtaining them, the Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties. The State Board of Elections is authorized to enforce the penalties provided in § 163-177 and § 163-178 for failure of a county elections board chairman or clerk of superior court to comply with the provisions of this chapter in making returns of a primary or election.

At the meeting required by the first paragraph of this section (or at any adjourned session thereof), the State Board of Elections shall examine the county abstracts when they have all been received and shall proceed with the canvass publicly. (1933, c. 165, s. 9; 1967, c. 775, s. 1.)

§ 163-189. Meeting of State Board of Elections to canvass returns of a special election for United States Senator or Representative.—If a special election is ordered by the Governor to fill a vacancy in the State's representation in the United States Senate or House of Representatives as provided for in § 163-12 or § 163-13, the State Board of Elections may meet for the purposes prescribed in § 163-188 as soon as its chairman shall have received abstracts of returns from all of the counties entitled to vote in the special election. The chairman of the State Board shall fix the day of the meeting not later than 10 days after the special election, and county boards of elections shall transmit their abstracts of returns to the State Board in sufficient time to be available for the State canvass. (1933, c. 165, s. 9; 1967, c. 775, s. 1.)

§ 163-190. State Board of Elections may refer to ballot boxes to resolve doubts.—When, on account of errors in tabulating returns and filling out abstracts, the result of a primary or election in any precinct, county, district, or the State cannot be accurately known, the State Board of Elections shall be allowed access to the ballot boxes to make or order a recount and to declare the results. (1915, c. 101, s. 27; 1917, c. 218; C. S., s. 6048; 1967, c. 775, s. 1.)

§ 163-191. Contested primaries and elections; how tie broken.—In a primary for party nomination for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the results shall be determined in accordance with the provisions of G.S. 163-111.

In a general election for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the person having the highest number of votes for each office, respectively, shall be declared duly elected to that office by the State Board of Elections. But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie vote. (1901, c. 89, s. 44; Rev., s. 4363; 1915, c. 121, s. 1; C. S., s. 5999; 1927, c. 260, s. 14; 1933, c. 165, s. 10; 1967, c. 775, s. 1; 1971, c. 219, ss. 1, 2.)

Editor's Note.—The 1971 amendment, effective July 1, 1971, rewrote the last sentence in the second paragraph and repealed a former third paragraph, which related to determination of contests by joint vote of the General Assembly.

§ 163-192. State Board of Elections to prepare abstracts and declare results of primaries and elections.—(a) After Primary.—At the conclusion of its canvass of the primary election, the State Board of Elections shall prepare separate abstracts of the votes cast:

(1) For Governor and all State officers, justices of the Supreme Court, judges of the Court of Appeals, judges of the superior court, and United States Senators.

(2) For members of the United States House of Representatives for the several congressional districts in the State.

(3) For district court judges for the several judicial districts in the State.
(4) For solicitor in the several solicitorial districts in the State.
(5) For State Senators in the several senatorial districts in the State composed of more than one county.
(6) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

Abstracts prepared by the State Board of Elections under this subsection shall state the total number of votes cast for each candidate of each political party for each of the various offices canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be nominated for each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(b) After General Election.—At the conclusion of its canvass of the general election, the State Board of Elections shall prepare abstracts of the votes cast:

(1) For President and Vice-President of the United States, when an election is held for those offices.
(2) For Governor and all State officers, justices of the Supreme Court, judges of the Court of Appeals, judges of the superior court, and United States Senators.
(3) For members of the United States House of Representatives for the several congressional districts in the State.
(4) For district court judges for the several judicial districts in the State.
(5) For solicitor in the several solicitorial districts in the State.
(6) For State Senators in the several senatorial districts in the State composed of more than one county.
(7) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.
(8) For and against any constitutional amendments or propositions submitted to the people.

Abstracts prepared by the State Board of Elections under this subsection shall state the names of all persons voted for, the office for which each received votes, and the number of legal ballots cast for each candidate for each office canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be elected to each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(c) Disposition of Abstracts of Returns.—The State Board of Elections shall file with the Secretary of State the original abstracts of returns prepared by it under the provisions of subsections (a) and (b) of this section, and also the duplicate county abstracts transmitted to the State Board of Elections under the provisions of § 163-177. (1933, c. 165, s. 9; 1966, Ex. Sess., c. 5, s. 7; 1967, c. 775, s. 1; 1969, c. 44, s. 87.)

Editor's Note.—The 1969 amendment inserted "judges of the Court of Appeals" in subdivision (1) of subsection (a) and in subdivision (2) of subsection (b).

§ 163-193. Results of election certified to Secretary of State; certificates of election.—After ascertaining and declaring the result of an election as provided in § 163-192 (b), the State Board of Elections shall certify the result to the Secretary of State. The Secretary of State shall then prepare and sign a certificate of election for each person elected and deliver it to him upon demand. (1933, c. 165, s. 9; 1967, c. 775, s. 1.)

§ **163-194. Governor to issue commissions to certain elected officials.**—Every person duly elected to one of the offices listed below, upon obtaining a certificate of his election from the Secretary of State under the provisions of § 163-193, shall procure from the Governor a commission attesting his election to the specified office, which the Governor shall issue upon production of the Secretary of State's certificate:

Members of the United States House of Representatives,

Justices, Judges, and Solicitors of the General Court of Justice. (1901, c. 89, ss. 61, 69, Rev., ss. 4370, 4377; C. S., ss. 6008, 6015; 1967, c. 775, s. 1; 1969, c. 44, s. 88.)

Editor's Note.—The 1969 amendment added "Justices, Judges, and Solicitors of the General Court of Justice" in the list and deleted therefrom "Justice of the Supreme Court," "Judge of the superior court," "Judge of the district court" and "Solicitor."

§ **163-195. Secretary of State to record abstracts.**—The Secretary of State shall record the State, district, and county abstracts filed with him by the State Board of Elections in a book to be kept by him for that purpose. (1933, c. 165, s. 9; 1967, c. 775, s. 1.)

§§ **163-196 to 163-200:** Reserved for future codification purposes.

ARTICLE 17.

Members of United States House of Representatives.

§ **163-201. Congressional districts specified.**—For the purpose of nominating and electing members of the House of Representative of the Congress of the United States in 1972 and every two years thereafter, the State of North Carolina shall be divided into eleven districts as follows:

First District: Beaufort, Bertie, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Greene, Hertford, Hyde, Jones, Lenoir, Martin, Pamlico, Pasquotank, Perquimans, Pitt, Tyrrell and Washington.

Second District: Caswell, Edgecombe, Franklin, Granville, Halifax, Nash, Northampton, Orange, Person, Vance, Warren and Wilson.

Third District: Bladen, Duplin, Harnett, Johnston, Lee, Onslow, Pender, Sampson and Wayne.

Fourth District: Chatham, Durham, Randolph and Wake.

Fifth District: Alleghany, Ashe, Davidson, Forsyth, Stokes, Surry and Wilkes.

Sixth District: Alamance, Guilford and Rockingham.

Seventh District: Brunswick, Columbus, Cumberland, Hoke, New Hanover and Robeson.

Eighth District: Anson, Cabarrus, Davie, Montgomery, Moore, Richmond, Rowan, Scotland, Stanly, Union and Yadkin.

Ninth District: Iredell, Lincoln and Mecklenburg.

Tenth District: Alexander, Burke, Caldwell, Catawba, Cleveland, Gaston and Watauga.

Eleventh District: Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania and Yancey. (Rev., s. 4366; 1911, c. 97; C. S., s. 6004; 1931, c. 216; 1941, c. 3; 1961, c. 864; 1966, Ex. Sess., c. 7, s. 1; 1967, c. 775, s. 1; c. 1109; 1971, c. 257.)

Editor's Note. — Session Laws 1967, c. 1109, rewrote this section.

The 1971 amendment so changed this section that a detailed comparison is not here practicable.

Constitutionality. — The act of the 1967 session of the legislature reapportioning congressional districts meets the minimum federal constitutional standards. Drum v. Seawell, 271 F. Supp. 193 (M.D.N.C. 1967).

Practical and Rational Equality Required. — While rigid mathematical standards are not the sine qua non of constitutional validity, practical and rational equality is required. Such equality recognizes only minor deviations which may occur in the recognition of rational and legitimate factors, free from the taint of arbitrariness, irrationality and discrimination. Drum v. Seawell, 250 F. Supp. 922 (M.D.N.C. 1966).

Stricter adherence to equality of population between districts may more logically be required in congressional than in state legislative representation. Drum v Seawell, 250 F. Supp. 922 (M.D.N.C. 1966).

Former Apportionment Unconstitutional.—See Drum v. Seawell, 249 F. Supp. 877 (M.D.N.C. 1965), aff'd, 383 U.S. 831, 86 Sup. Ct. 1237, 16 L. Ed. 2d 298 (1966).

§ **163-202. Election after reapportionment of members of House of Representatives.**—Whenever, by a new apportionment of members of the United States House of Representatives, the number of Representatives from North Carolina shall be changed, and neither the Congress nor the General Assembly shall provide for electing them, the following procedures shall apply:

(1) If the number of Representatives is increased, the Representative from each of the existing congressional districts shall be elected by the qualified voters of his district, and the additional Representatives apportioned to North Carolina shall be elected on a single ballot by the qualified voters of the whole State.

(2) If the number of Representatives is decreased, existing congressional district lines shall be ignored, and all Representatives apportioned to North Carolina shall be elected on a single ballot by the qualified voters of the whole State. (1901, c. 89, s. 58; Rev., s. 4368; C. S., s. 6006; 1967, c. 775, s. 1.)

§§ **163-203 to 163-207**: Reserved for future codification purposes.

ARTICLE 18.

Presidential Electors.

§ **163-208. Conduct of presidential election.** — Unless otherwise provided, the election of presidential electors shall be conducted and the returns made in the manner prescribed by this chapter for the election of State officers. (1901, c. 89, s. 79; Rev., s. 4371; C. S., s. 6009; 1933, c. 165, s. 11; 1967, c. 775, s. 1.)

§ **163-209. Names of presidential electors not printed on ballots.**—The names of candidates for electors of President and Vice-President nominated by any political party recognized in this State under § 163-96 shall be filed with the Secretary of State but shall not be printed on the ballot. In place of their names, in accordance with the provisions of § 163-140 there shall be printed on the ballot the names of the candidates for President and Vice-President of each political party recognized in this State. A vote for the candidates named on the ballot shall be a vote for the electors of the party by which those candidates were nominated and whose names have been filed with the Secretary of State. (1901, c. 89, s. 78; Rev., s. 4372; C. S., s. 6010; 1933, c. 165, s. 11; 1949, c. 672, s. 2; 1967, c. 775, s. 1.)

§ **163-210. Governor to proclaim results; casting State's vote for President and Vice-President.**—Upon receipt of the abstracts prepared by the State Board of Elections and delivered to him in accordance with § 163-192, the Secretary of State, under his hand and the seal of his office, shall certify to the Governor the names of the persons elected to the office of elector for President and Vice-President of the United States as stated in the abstracts of the State Board of Elections. Thereupon, the Governor shall immediately issue a proclamation setting forth the names of the electors and instructing them to be present in the Hall of the House of Representatives in the city of Raleigh at noon on the first Monday after the second Wednesday in December next after their election, at which time the electors shall meet and vote on behalf of the State for President and Vice-President of the United States. The Governor shall cause this proclamation to be published in the daily newspapers published in the city of Raleigh.

On or before the date fixed for the meeting of the electors, the Governor shall send by registered mail to the Administrator of General Services, a certificate under the great seal of the State setting forth the names of the persons chosen as presidential electors for this State and the number of votes cast for each. At the same time he shall deliver to the electors six duplicate-originals of the same certificate, each bearing the great seal of the State at any time prior to receipt of the certificate of the Governor or within forty-eight hours thereafter, any person elected to the office of elector may resign by submitting his resignation, written and duly verified, to the Governor. Failure to so resign shall signify consent to serve and to cast his vote for the candidate of the political party which nominated such elector.

In case of the absence, ineligibility or resignation of any elector chosen, or if the proper number of electors shall for any cause be deficient, those present at the required meeting shall forthwith elect from the citizens of the State a sufficient number of persons to fill the deficiency, and the persons chosen shall be deemed qualified electors to vote for President and Vice-President of the United States. (1901, c. 89, s. 81; Rev., s. 4374; 1917, c. 176, s. 2; C. S., ss. 5916, 6012; 1923, c. 111, s. 12; 1927, c. 260, s. 17; 1933, c. 165, s. 11; 1935, c. 143, s. 2; 1967, c. 775, s. 1; 1969, c. 949, ss. 1, 2.)

Editor's Note. — The 1969 amendment added the third and fourth sentences of the second paragraph and substituted "ineligibility or resignation" for "or ineligibility" near the beginning of the third paragraph.

§ **163-211. Compensation of presidential electors.** — Presidential electors shall be paid, for attending the meeting held in the city of Raleigh on the first Monday after the second Wednesday in December next after their election, the sum of ten dollars ($10.00) per day and traveling expenses at the rate of five cents (5¢) per mile in going to and returning home from the required meeting. (1901, c. 89, s. 84; Rev., s. 2761; C. S., s. 3878; 1933, c. 5, 1967, c. 775, s. 1.)

§ **163-212. Penalty for failure of presidential elector to attend and vote.**—Any presidential elector having previously signified his consent to serve as such, who fails to attend and vote for the candidate of the political party which nominated such elector, for President and Vice-President of the United States at the time and place directed in G.S. 163-210 (except in case of sickness or other unavoidable accident) shall forfeit and pay to the State five hundred dollars ($500.00), to be recovered by the Attorney General in the Superior Court of Wake County. In addition to such forfeiture, refusal or failure to vote for the candidates of the political party which nominated such elector shall constitute a resignation from the office of elector, his vote shall not be recorded, and the remaining electors shall forthwith fill such vacancy as hereinbefore provided. (1901, c. 89, s. 83; Rev., s. 4375; C. S., s. 6013; 1933, c. 165, s. 11; 1967, c. 775, s. 1; 1969, c. 949, s. 3.)

Editor's Note. — The 1969 amendment inserted "for the candidate of the political party which nominated such elector" in the first sentence and added the second sentence.

§ **163-213:** Reserved for future codification purposes.

ARTICLE 18A.

Presidential Primary Act.

§ **163-213.1. Short title.**—This Article may be cited as the "Presidential Primary Act." (1971, c. 225.)

§ **163-213.2. Presidential primary, date of election.**—Beginning with the primary elections to be conducted in 1972 and every four years thereafter, as directed in G.S. 163-1(b), the voters of this State shall be given an opportunity to express their preferance for the person to be the presidential candidate of their political party. (1971, c. 225.)

§ **163-213.3. Conduct of election.** — The presidential primary election shall be conducted and canvassed by the same authority and in the manner provided by law for the conduct and canvassing of the primary election for the office of Governor and all other offices enumerated in G.S. 163-187 and under the same provisions stipulated in G.S. 163-188. The State Board of Elections shall have authority to promulgate reasonable rules and regulations, not inconsistent with provisions contained herein, pursuant to the administration of this Article. (1971, c. 225.)

§ **163-213.4. Nomination by State Board of Elections.**—The State Board of Elections shall convene in Raleigh on the date prescribed for the deadline for candidates filing for State and national offices in G.S. 163-106(c). At the meeting required by this section the State Board of Elections shall nominate as presidential primary candidates all of those generally advocated and nationally recognized as candidates of the political parties, qualified under provisions of Article 9 of Chapter 163 of the General Statutes, for the office of President of the United States. Immediately upon completion of this requirement the Board shall release, to the news media, all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions of G.S. 163-213.6 have been complied with. Upon the completion of the form and the filing fee as required by G.S. 163-213.6, the Board shall release the partial selection of nominees to the news media. (1971, c. 225.)

§ **163-213.5. Nomination by petition.**—Any person seeking the endorsement by the national political party for the office of President of the United States, or any group organized in this State on behalf of, and with the consent of, such person, may file with the State Board of Elections petitions signed by 10,000 persons who, at the time they sign are registered and qualified voters in this State and are affiliated, by such registration, with the same political party as the candidate for whom the petitions are filed. Such petitions shall be certified promptly by the chairman of the board of elections of the county in which the signatures were obtained and shall be filed by the petitioners with the State Board of Elections no later than 5:00 P.M. on the fifteenth day following the date on which the State Board of Elections is required to meet as directed by G.S. 163-213.4.

The petitions must state the name of the candidate for nomination, along with a letter of approval signed by such candidate. Said petitions must also state the name and address of the chairman of any such group organized to circulate petitions authorized under this section. The requirement for signers of such petitions shall be the same as now required under provisions of G.S. 163-96(b)(1) and (2). The requirement of the respective chairmen of county boards of elections shall be the same as now required under the provisions of G.S. 163-96(b)(1) and (2) as they relate to the chairman of the county board of elections.

The group of petitioners shall pay to the chairman of the county board of elections a fee of ten cents (10¢) for each signature he is required to examine and verify under the provisions of this section.

The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the chairman of such group organized to circulate petitions. The form and style of petition shall be as prescribed by the State Board of Elections. (1971, c. 225.)

§ **163-213.6. Notification to candidates; filing fee.**—The State Board of Elections shall forthwith contact each person who has been nominated by the

Board or by petition and notify him in writing by registered mail with return receipt requested, that his name will be printed as a candidate on the North Carolina presidential primary ballot, provided such candidates as are nominated by the State Board of Elections shall, within 15 days after receipt of the notification submit a filing fee of one thousand dollars ($1,000) to the State Board of Elections along with a "Notice of Candidacy" form to be supplied by the Board. Candidates nominated by petition under the provisions of this Article shall not be required to submit the filing fee required by this section. Failure of candidates, nominated by the State Board of Elections, to submit such fee and execute such "Notice of Candidacy" shall be a disclaimer and a withdrawal of the name from the primary. (1971, c. 225.)

§ **163-213.7. Voting in presidential primary; ballots.**—The names of all candidates in the presidential primary shall appear with the names of the candidates for other offices of their respective parties at an appropriate place on the ballot or voting machine. The voter shall be able to cast his ballot for one of the presidential candidates of his party, but shall not be permitted to vote for candidates of a political party different from his registration. Persons registered as "Independents" or "No Party" shall not participate in the presidential primary except upon changing such affiliation in accordance with law. The State Board of Elections shall have authority, in its sole discretion, to print a separate ballot for presidential candidates or to combine it with some or all of the ballots presently authorized under the provisions of G.S. 163-109(b). (1971, c. 225.)

§ **163-213.8. Political parties bound by results of primary; first ballot.**—Upon the completion of the official canvass of the results of the primary by the State Board of Elections, the Secretary of State shall certify to the State chairman of each political party participating in the primary the following:

(1) The names of the candidates, entitled to delegate votes under provisions of G.S. 163-213.9; and

(2) The total vote received by each; and

(3) A declaration that the results of the presidential primary, in accordance with the division of votes reflected by the official canvass, shall be the official vote, cast by each political party at its national convention, on the first ballot only, and shall be designated by this Article as an automatic vote, expressing the will of the people of the State of North Carolina; and

(4) After the vote on the first ballot by a political party at its national convention, as required by this Article, all responsibility under this Article shall terminate and further balloting shall be the prerogative of the political parties as might be prescribed by the rules of such political parties. (1971, c. 225.)

§ **163-213.9. Number of votes to be cast for candidates participating in primary.**—The four candidates receiving the highest number of votes, or all candidates if there are fewer than four participating in the primary, provided each such candidate receives at least fifteen percent (15%) of the total vote cast by his political party, shall be awarded a pro rata portion of the authorized delegate vote of his political party as follows:

(1) The total vote received by the candidates qualifying under the provisions of this Article and subsections herein shall, when combined, be equal to one hundred percent (100%); and

(2) Each such candidate shall share in the total percentage in direct proportion to the total vote received by him as is calculated to represent the total vote received by him as it is mathematically determined to be the percentage of the aggregate vote which represents one hundred percent (100%); and

(3) Each political party shall appropriate such percentage, as is determined by this section, to the total number of delegate votes as are allotted by the national committee of each party; and

(4) Each political party shall, on the first ballot at its national convention, cast this State's vote for the candidates as determined by the primary and calculated under this section.

Provided, however, in the event of the death or the withdrawal of a candidate receiving votes under this section prior to the tabulation of the first ballot, any delegate votes allocated to such candidate who dies or withdaws shall be considered uncommitted. Withdrawal as it appears in the preceding sentence shall mean notice in writing by the candidate to the chairman of the North Carolina delegation prior to the first ballot. (1971, c. 225.)

§ **163-213.10. National committee to be notified of provisions relating to automatic vote on first ballot.**—It shall be the responsibility of the State chairman of each political party, qualified under the laws of this State, to notify his party's national committee no later than January 30 of each year in which such presidential primary shall be conducted of the provisions contained herein relating to the automatic vote on the first ballot as required under this Article. (1971, c. 225.)

§§ **163-214 to 163-217**: Reserved for future codification purposes.

ARTICLE 19.

Petitions for Elections and Referenda.

§ **163-218. Registration of notice of circulation of petition.**—From and after July 1, 1957, notice of circulation of a petition calling for any election or referendum shall be registered with the county board of elections with which the petition is to be filed, and the date of registration of the notice shall be the date of issuance and commencement of circulation of the petition. (1957, c. 1239, s. 1; 1967, c. 775, s. 1.)

§ **163-219. Petition void after one year from registration.**—Petitions calling for elections and referenda shall be and become void and of no further effect one year after the date the notice of circulation is registered with the county board of elections with which it is required to be filed; and notwithstanding any public, special, local, or private act to the contrary, no election or referendum shall thereafter be called or held pursuant to or based upon any such void petition. (1957, c. 1239, s. 2; 1967, c. 775, s. 1.)

§ **163-220. Limitation on petitions circulated prior to July 1, 1957.**—Petitions calling for elections or referenda which were circulated prior to July 1, 1957, shall be and become void and of no further force and effect one year after the date of issuance of such petitions for circulation; and notwithstanding any public, special, local, or private act to the contrary, no election or referendum shall be called or held pursuant to or based upon any such void petition from and after July 1, 1957. (1957, c. 1239, s. 3; 1967, c. 775, s. 1.)

§§ **163-221 to 163-225**: Reserved for future codification purposes.

SUBCHAPTER VII. ABSENTEE VOTING.

Article 20.

Absentee Ballot.

§ **163-226. Who may vote an absentee ballot.**—(a) Any qualified voter of the State, whether or not in the armed forces of the United States, may vote by absentee ballot in a state-wide general election in the manner provided in this article if:

(1) He expects to be absent from the county in which he is registered during the entire period that the polls are open on the day of the state-wide general election in which he desires to vote; or

(2) He is unable to be present at the voting place to vote in person on the day of the state-wide general election in which he desires to vote because of his sickness or other physical disability.

(b) Any qualified voter of a county who is qualified to vote by absentee ballot under this section in a state-wide general election is authorized to vote an absentee ballot in any county bond election in accordance with the provisions of this article. (1939, c. 159, s. 1; 1963, c. 457, s. 1; 1967, c. 775, s. 1; c. 952, s. 1.)

Local Modification to Former §§ 163-54 to 163-69.1. — Graham: 1959, c. 780, s. 1; Sampson: 1941, c. 167; 1963, c. 882.

Local Modification to Former § 163-54. —Jackson: 1939, c. 309.

Editor's Note. — The 1967 amendment, effective for any election arising on or after Sept. 1, 1967, designated the former provisions of this section as subsection (a) and added subsection (b).

As to abuses under prior law and respects in which this enactment seeks to remedy those evils, see 17 N.C.L. Rev. 355.

Effect of Mistake or Misconduct of Election Officials. — Persons in all respects qualified to cast absentee ballots will not be disfranchised for the mistake or even willful misconduct of election officials in performing their duties when the mistake or misconduct does not amount to coercion, fraud or imposition and it appears that the ballots expressed only the free choices of the electors themselves. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948).

Under Former Law.—For cases decided under the former law, see Jenkins v. State Bd. of Elections, 180 N.C. 169, 104 S.E. 346 (1920), holding law valid; Davis v. County Bd. of Educ., 186 N.C. 227, 119 S.E. 372 (1923), holding provision requiring certificate or affidavit to be mandatory; State ex rel. Robertson v. Jackson, 183 N.C. 695, 110 S.E. 593 (1922), holding that persons within county were not entitled to vote as absentees; Boulding v. Davis, 200 N.C. 24, 156 S.E. 103 (1930), holding that jurat was prima facie evidence only that ballots had been sworn to; Phillips v. Slaughter, 209 N.C. 543, 183 S.E. 897 (1936), holding law applicable to municipal elections.

The provision of the former law that election laws be construed in favor of the right to vote was held not to apply when the elector desires to avail himself of a special privilege and does not, of his own volition, comply with the conditions precedent prescribed by the statute, which gives him the right to do so. Davis v. County Bd. of Educ., 186 N.C. 227, 119 S.E. 372 (1923).

§ **163-227. Application for absentee ballots; forms of application.**— A voter falling in either of the categories defined in G.S. 163-226 may apply for absentee ballots not earlier than 45 days prior to the statewide general election or county bond election in which he seeks to vote and not later than 6:00 P.M. on Wednesday before that election. Except as provided in the following paragraph, the voter shall apply for absentee ballots under the provisions of subdivision (1) or subdivision (2) of this section.

If a voter unexpectedly becomes ill or physically disabled to the extent defined in G.S. 163-226 after 6:00 P.M., on Wednesday and before 10:00 A.M., on Monday before the election, he may apply for absentee ballots under the provisions of subdivision (3) of this section.

(1) Expected Absence from County on Election Day.—A voter expecting to be absent from the county in which registered during the entire period

that the polls will be open on election day, shall make written application for absentee ballots to the chairman of the board of elections of the county in which he is registered not earlier than 45 days nor later than 6:00 P.M., on Wednesday before the election. The application shall be submitted in the form set out at the end of this subdivision upon a copy which shall be furnished the voter by the chairman of the county board of elections.

The applicant shall sign his application personally. The application form when properly filled out shall be transmitted by mail or delivered in person by the applicant to the chairman or the executive secretary of the county board of elections.

The form for use in applying for absentee ballots under this subdivision shall be as follows:

"Affidavit and Application for Ballots by Voter Who Expects to Be Absent from County in Which Registered on Election Day

(Anyone who falsifies this statement is subject to a fine or imprisonment, or both.)

Application No. .... issued to .... (This line shall be filled out before application is issued.)

State of ....

County of ....

I, ..., do solemnly swear that I am a registered voter residing in .... precinct, ... township, in the County of ...., North Carolina, and that I am lawfully entitled to vote in that precinct at the general or bond election to be held therein on the .... day of ...., 19.. ; that I expect to be absent from the county of my residence during the entire period that the polls will be open on the day of the general or bond election, and that I will have no opportunity to vote in person on that day.

I hereby make application for an official ballot or ballots on which I may vote at the general or bond election specified. I will return the ballot or ballots by mail or will deliver them in person to the chairman or executive secretary of the board of elections of the county of my residence prior to 12:00 noon, on Saturday preceding the election in which they shall be cast.

....

(Signature of applicant)

....

(Post-office address to which ballots are to be mailed)

(2) Absence for Sickness or Physical Disability Occurring before 6:00 P.M., on Wednesday Prior to Election.—A voter expecting to be unable to go to the voting place to vote in person on election day because of his sickness or other physical disability, shall make written application for absentee ballots to the chairman of the board of elections of the county in which he is registered not earlier than 45 days nor later than 6:00 P.M., on Wednesday before the election. The application shall be submitted in the form set out at the end of this subdivision upon a copy which shall be furnished the voter by the chairman of the county board of elections.

The application shall be signed by the voter personally.

The application form, when properly filled out, shall be transmitted by mail or delivered in person by the applicant to the chairman or executive secretary of the county board of elections of the county in which he is registered.

The form for use in applying for absentee ballots under this subdivision shall be as follows:

"Affidavit and Application for Ballots by Voter Who Expects to Be Unable to Go to Voting Place on Election Day Because of Sickness or Physical Disability Occurring Prior to 6:00 P.M., on Wednesday Before the Election

(Anyone who falsifies this statement is subject to a fine or imprisonment, or both.)

Application No. .... issued to .... (This line shall be filled out before application is issued.)

State of North Carolina
County of ....

I, ..., do solemnly swear that I am a registered voter residing in .... precinct, ... township, in the County of ...., North Carolina, and that I am lawfully entitled to vote in that precinct at the general or bond election to be held therein on the .... day of ...., 19....; that by reason of sickness or physical disability, to wit: .... (Insert here statement of nature of illness or disability)
I will be unable to travel from my home or place of confinement to the voting place in my precinct on election day.

I hereby make application for an official ballot or ballots on which I may vote at the general or bond election specified. I will return the ballot or ballots by mail or will deliver them in person to the chairman or executive secretary of the board of elections of the county of my residence prior to 12:00 noon, on Saturday preceding the election in which they shall be cast.

....
(Signature of applicant)

....
(Post-office address to which ballots are to be mailed)

(3) Absence for Sickness or Physical Disability Occurring after 6:00 P.M., on Wednesday Prior to Election.—A voter expecting to be unable to go to the voting place to vote in person on election day because of sickness or other disability occurring after 6:00 P.M., on Wednesday before the election, shall make written application for absentee ballots to the chairman of the board of elections of the county in which he is registered not later than 10:00 A.M., on Monday preceding the election. The application shall be submitted in the form set out at the end of this subdivision upon a copy which shall be furnished the voter by the chairman of the county board of elections.

The chairman of the county board of elections shall not issue or accept an application under the provisions of this subdivision later than 10:00 A.M., on Monday preceding the election in which the applicant seeks to vote.

The application shall be signed by the voter personally, or it may be signed for him by the voter's husband, wife, brother, sister, parent, or child. The application shall be signed in the presence of a witness who shall sign his name in the place provided on the form.

The certificate printed on the application form below the signatures of the applicant and his subscribing witness shall be filled in and signed in the presence of a witness by a licensed physician who is attending the applicant. The witness to the physician's certificate shall sign his name in the place provided on the form.

The application form, when properly filled out, signed by or for the applicant in the presence of a subscribing witness as provided in this subdivision, and certified and signed by the attending physician in the presence of a subscribing witness, may be transmitted by mail to the chairman or executive secretary of the board of elections of the county in which the applicant is registered, or it may be delivered to the chairman or executive secretary in person by the applicant or by his wife, husband, brother, sister, parent, or child.

The form for use in applying for absentee ballots under this subdivision shall be as follows:

"Application for Ballots by Voter Who Expects to Be Unable to Go to Voting Place on Election Day Because of Sickness or Physical Disability Occurring After 6:00 P.M., on Wednesday Before the Election and Certificate of Attending Physician

(Anyone who falsifies this statement is subject to a fine or imprisonment, or both.)

Application No. .... issued to .... (This line shall be filled out before application is issued.)

State of North Carolina
County of ....

I, ..., do hereby certify that I am a registered voter residing in .... precinct, ... township, in the County of ...., North Carolina, and that I am lawfully entitled to vote in that precinct at the general or bond election to be held therein on the .... day of ...., 19....; that by reason of sickness or physical disability occurring since 6:00 P.M., last Wednesday, I will be unable to travel from my home or place of confinement to the voting place in my precinct on election day.

I hereby make application for an official ballot or ballots on which I may vote at the general or bond election specified. I will transmit the ballot or ballots to the chairman or executive secretary of the board of elections of the county of my residence prior to 3:00 P.M., on election day.

This .... day of ...., 19.....

....
(Signature of applicant or person completing form for applicant)

....
(Address to which ballots are to to delivered)

....
(Relationship of person completing form for applicant if not completed by applicant in person)

Witness:.........................
(Signature of person witnessing signing of application)

....
(Address of witness)

"Physician's Certificate

State of ....
County of ....

I, ..., do hereby certify that I am a physician, duly licensed to practice medicine in the State of ....; that I have examined .... (insert applicant's name) on .... (insert date) for an illness or physical disability occurring since 6:00 P.M., last Wednesday, and that I believe that he (or she) will be physically incapable of being at

the voting place at the election to be held on the .... day of
.........., 19.., for the following reasons:
.... (insert reasons in space provided).

This .... day of ...., 19...

....
(Signature of physician)

....
(Address of physician)

Witness:..........................
(Signature of person witnessing signing
of certificate)

....
(Address of witness)"

(4) Application Forms Issued by Chairman of County Board of Elections.—The chairman of the county board of elections shall be sole custodian of all absentee ballot application forms. In accordance with one of the following two procedures, he shall issue and deliver a single application form, upon request, to a person authorized to sign such an application under the provisions of this section:

a. He may deliver the form to a voter personally at the office of the county board of elections for the voter's own use; or

b. He may mail the form to a voter for his own use upon receipt of a written request from the voter.

The chairman shall not entrust any other person to deliver an application form to a voter, nor shall he mail an application form to a voter who has not made written request for one, except as provided in subdivision (5) of this section.

At the time he issues an application form, the chairman of the county board of elections shall number it and write the applicant's name in the space provided therefor at the top of the form. At the same time the chairman shall insert the applicant's name and the number assigned his application in the register of absentee ballot applications and ballots issued provided for in G.S. 163-228.

The chairman shall issue only one application form to a voter unless a form previously issued is returned to the chairman and marked "Void" by him. In such a situation, the chairman may issue another application form to an authorized person, but he shall retain the voided application form in his records. Provided, that the chairman may deliver to a voter only the voter's application, and where proper request has been made, the application of the voter's spouse, and the voter may deliver the application to his spouse.

(5) Applications for Absentee Ballots Transmitted by Mail or in Person.—An application for absentee ballots shall be made and signed only by the voter desiring to use them and shall be valid only when transmitted to the chairman or executive secretary of the county board of elections in person or by the United States mail: Provided, that a voter who becomes sick or physically disabled after 6:00 P.M., on Wednesday before the election may have an application prepared, signed, and transmitted to the chairman or executive secretary of the county board of elections in accordance with the provisions of subdivision (3) of this section. (1939, c. 159, s. 2; 1943, c. 751, s. 1; 1963, c. 457, s. 2; 1967, c. 775, s. 1; c. 952, s. 3; 1971, c. 947, ss. 1-5.)

Editor's Note. – The 1967 amendment, effective for any election arising on or after Sept. 1, 1967, made this section applicable to bond elections.

The 1971 amendment, effective July 1, 1971, so changed this section as to make a detailed comparison impracticable.

§ 163-228. Register of absentee ballot applications and ballots issued; a public record.—The State Board of Elections shall furnish the chairman of the board of elections in each county of the State with a book to be called the register of absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this article.

The register of absentee ballot applications and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time within 30 days before and 30 days after a state-wide general election, a county bond election, or at any other time when good and sufficient reason may be assigned for its inspection. (1939, c. 159, ss. 3, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 457, s. 3; 1965, c. 1208; 1967, c. 775, s. 1; c. 952, s. 4.)

Editor's Note. — The 1967 amendment, effective for any election arising on or after Sept. 1, 1967, inserted "a county bond election" in the second paragraph.

§ 163-229. Absentee ballots, container-return envelopes, and instruction sheets.—(a) Absentee Ballot Form.—In accordance with the provisions of § 163-230 (3), persons entitled to vote by absentee ballot shall be furnished with regular official ballots; separate or distinctly marked absentee ballots shall not be used.

(b) Container-Return Envelope.—In time for use not later than forty-five days before a state-wide general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the chairman of the county board of elections. Each container-return envelope shall be printed in accordance with the following instructions:

(1) On one side shall be printed and identified space in which shall be inserted the application number of the voter and the following statement which shall be certified by one member of the county board of elections:

Certification of Election Official

The undersigned election official does by his hand and seal certify that .... is a registered and qualified voter of .... County Precinct # .... and has made proper application to vote under the Absentee Ballot Law of North Carolina.

.... (SEAL)

Chairman-Member

(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following affidavit:

"Affidavit of Absentee or Sick Voter

State of ....
County of ....

I, ..., do solemnly swear that I am a resident and registered voter in .... precinct, ... County, North Carolina; that on the day of the general or bond election, ..., 19...., [check whichever of the following statements is correct]

[ ] I will be absent from the county in which I reside.
[ ] Due to sickness or physical disability, I will be unable to travel to the voting place in the precinct in which I reside.

I further swear that I made application for absentee ballots, and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instructions.

....

(Signature of voter)

Sworn to and subscribed before me this .... day of
........................., 19 ....

....
(Signature of officer
administering oath)

(SEAL)

....
(Title of officer)

Note: The acknowledgement of a member of the armed forces of the United States may be taken before any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces.

(c) Instruction Sheets.—In time for use not later than forty-five days before a state-wide general election or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the chairman of the county board of elections. (1929, c. 164, s. 39; 1939, c. 159, ss. 3, 4; 1943, c. 751, s. 2; 1963, c. 457, ss. 3, 4; 1965, c. 1208; 1967, c. 775, s. 1; c. 851, s. 1; c. 952, s. 5.)

Editor's Note. — The first 1967 amendment rewrote subdivision (1) of subsection (b).

The second 1967 amendment, effective for any election arising on or after Sept. 1, 1967, inserted "or county bond election" in the first sentence of subsection (b), substituted, in the affidavit form in subdivision (2) of subsection (b), "general or bond election" for "general election, November" and inserted "or county bond election" in subsection (c).

§ 163-230. Consideration and approval of applications and issuance of absentee ballots.—The procedure to be followed in receiving applications for absentee ballots, passing upon their validity, and issuing absentee ballots shall be governed by the provisions of this section.

(1) Record of Applications Received and Ballots Issued.—Upon receipt of a voter's written application for absentee ballots the chairman of the county board of elections shall promptly enter in the register of absentee ballot applications and ballots issued so much of the following information as he has not already entered thereunder the provisions of § 163-227 (4):

a. Name of voter applying for absentee ballots.
b. Number of assigned voter's application when issued.
c. Precinct in which applicant is registered.
d. Address to which ballots are to be mailed.
e. Reason assigned for requesting absentee ballots.
f. Date application for ballots is received by chairman.

(2) Determination of Validity of Applications for Absentee Ballots.—The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chairman or any other member of the board individually.

a. Required meetings of county board of elections. — During the period opening forty-five days before a state-wide general election or county bond election and closing at 6:00 P.M. on Wednesday before the election, the county board of elections shall hold public meetings on Monday and Friday of each week at 10:00 A.M. and it shall also hold public meetings at 10:00 A.M. on both Thursday and Monday immediately preceding election day. These meetings shall be held at the county courthouse or at the elections board's office at the hour fixed by law. At these meetings the county board of elections shall pass upon applications for absentee ballots.

Upon a majority vote, the county board of elections may hold the required public meetings at an hour other than 10:00 A.M., and it may hold more than one session on each Monday and Friday it is required to meet and may set the hours of any additional sessions. If the board desires to exercise either or both of the options granted by the preceding sentence, it shall do so prior to the date on which it is required to hold its first public meeting under the provisions of this subdivision and in time to give the notice required by the fourth paragraph of this lettered portion of this subdivision; thereafter, no change shall be made in the hours fixed for the board's public meetings on absentee ballot applications.

It shall not be necessary for the chairman of the county board of elections to give notice to other board members of weekly meetings of the board which are fixed as to time and place by this section.

If the county board of elections changes the time of holding its Monday and Friday meetings or provides for additional meetings on Mondays and Fridays in accordance with the terms of this subdivision, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county, and a notice thereof shall be posted at the courthouse door of the county, at least one week prior to the time fixed for holding the first meeting under this subdivision.

The county board of elections shall not be required to hold any of the meetings prescribed by this subdivision unless, since its last preceding meeting, it actually has received one or more applications for absentee ballots which it has not passed upon. When no meeting is to be held for this reason, the chairman shall notify each of the other members of the county board of elections that the scheduled public meeting will not be held and state the reasons for its cancellation.

b. Procedure at required meeting; making determination.—At each public meeting of the county board of elections the chairman shall present for consideration, and the board shall pass upon, the validity of all applications for absentee ballots received since its last preceding public meeting held for that purpose. In connection with each application received by mail the chairman shall also present the container envelope in which the application was received. At each such meeting any registered voter of the county shall be heard and allowed to present evidence in opposition to, or in favor of, the issuance of absentee ballots to any voter making application for them.

The county board of elections may consider the registration book evidence of the voter's signature if available and any other evidence that may be necessary to pass upon such an application.

If the board finds that the applicant is a qualified voter of the county, that he is registered in the precinct stated in his application, that the assertions in his application are true, and that his application is in proper form, it shall approve his application for absentee ballots.

c. Record of board's determination; decision final.—At the time the county board of elections makes its decision on an application for absentee ballots, the chairman shall enter in the appropriate column in the register of absentee ballot applications and ballots issued opposite the name of the applicant a notation of whether his application was "Approved" or "Disapproved." The decision of the board on the validity of an application for absentee ballots shall be final, subject only to such review as may be necessary in the event of an election contest.

(3) Delivery of Absentee Ballots and Container-Return Envelope to Applicant.—When the county board of elections approves an application for absentee ballots, the chairman shall promptly issue and transmit them to the applicant in accordance with the following instructions:

a. On the top margin of each ballot the applicant is entitled to vote, the chairman shall write or type the words "Absentee Ballot No. ......" and insert in the blank space the number assigned the applicant's application in the register of applications for absentee ballots and ballots issued. He shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter.

b. The chairman shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of § 163-229 (b), the absentee voter's name, his application number, and the designation of the precinct in which his ballots are to be voted. The chairman shall leave the container-return envelope holding the ballots unsealed.

c. The chairman shall then place the unsealed container-return envelope holding the ballots, together with printed instructions for voting and returning the ballots, in an envelope addressed to the applicant at the post-office address stated in his application, seal the envelope, and mail it at the expense of the county board of elections, or deliver it to the applicant in person: Provided, that in case of approval of an application received after 6:00 P.M. on Wednesday before the election under the provisions of § 163-227 (3), in lieu of transmitting the ballots to the applicant in person or by mail, the chairman may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to the applicant's husband, wife, brother, sister, parent, or child. (1939, c. 159, s. 3; 1963, c. 457, s. 3; 1965, c. 1208; 1967, c. 775, s. 1; c. 952, s. 6.)

Editor's Note. — The 1967 amendment, effective for elections arising on or after Sept. 1, 1967, inserted "or county bond election" near the beginning of paragraph a of subdivision (2).

Delivery of Ballot to Voter. — The fact that the chairman of the county board of elections, in company with candidates in the election, personally delivers absentee ballots to absentee voters at their temporary residence in another state or county is insufficient, of itself, to vitiate their votes, there being no evidence remotely suggesting coercion, fraud, or imposition. State ex rel. Owens v. Chaplin, 228 N.C 705, 47 S.E.2d 12 (1948).

§ 163-231. Voting absentee ballots and transmitting them to chairman of county board of elections.—(a) Procedure for Voting Absentee Ballots.—In the presence of an officer authorized to administer oaths, having an official seal, the voter shall:

(1) Mark his ballots, or cause them to be marked in his presence according to his instructions.

(2) Fold each ballot separately, or cause each of them to be folded in his presence.

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in his presence.

(4) Make and subscribe the affidavit printed on the container-return envelope according to the provisions of § 163-229 (b).

The officer administering the oath shall then complete the form on the container-return envelope and affix his seal in the place indicated. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the chairman of the county board of elections who issued the ballots.

In the case of voters who are members of the armed forces of the United States, as defined in § 163-245, the signature of any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces, as a witness to the execution of any certificate required by this or any other section of this article to be under oath shall have the force and effect of the jurat of an officer with a seal fully authorized to take and administer oaths in connection with absentee ballots.

(b) Transmitting Executed Absentee Ballots to Chairman of County Board of Elections.—The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the chairman of the county board of elections who issued them as follows:

(1) If the ballots were issued under the provisions of either subdivision (1) or subdivision (2) of § 163-227, the sealed envelope shall be transmitted by the voter in person or by mail (at the voter's expense) in sufficient time for the executed ballots to reach the chairman of the county board of elections by 12:00 noon, on the Saturday immediately preceding the state-wide general election. If such ballots are received later than that hour they shall not be accepted for voting.

(2) If the ballots were issued under the provisions of subdivision (3) of § 163-227, the sealed envelope may be transmitted by the voter in person, or by mail (at the voter's expense), or it may be delivered to the chairman by the voter's husband, wife, brother, sister, parent, or child, in sufficient time for the executed ballots to reach the chairman of the county board of elections by 3:00 P.M., on the day of the state-wide general election. If such ballots are received later than that hour they shall not be accepted for voting. (1939, c. 159, ss. 2, 5; 1941, c. 248; 1943, c. 736; c. 751, s. 1; 1945, c. 758, s. 5; 1963, c. 457, ss. 2, 5; 1967, c. 775, s. 1.)

Amendment Effective July 1, 1972.—Session Laws 1971, c. 1247, s. 3, will add "or by U.S. mail by 12:00 noon on the Wednesday immediately preceding the state-wide primary election" at the end of the first sentence of subdivision (1) of subsection (b). Section 4 of the 1971 amendatory act provides that "This act shall be in full force and effect on and after July 1, 1972."

Voters Must Be Sworn.—Where the evidence supports the findings that certain absentee voters were not sworn, the rejection of their ballots is proper. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948).

Oaths Need Not Be Taken upon the Bible.—The fact that the oaths of absentee voters were not taken by them upon the Bible, but were taken with uplifted hands, does not invalidate their votes. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948).

The interest of the clerk of the superior court in his own reelection, standing alone, does not disqualify him from administering oaths to absentee voters, administering the oaths being ministerial and not judicial. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948).

§ 163-232. Certified list of approved applications to be transmitted to State Board of Elections and posted; original applications to accompany list.—The chairman of the county board of elections shall prepare a list, in triplicate, of all applications for absentee ballots received by him which have been approved by the county board of elections. At the end of the list he shall execute the following certificate under oath:

"State of North Carolina
County of ....

I, ..., chairman of the ....

county board of elections, do hereby certify that the foregoing is a list of all applications filed with me for absentee ballots to be voted in the election on the .... day of ...., 19......, which have been approved by the county board of elections. I further certify that I have issued ballots to no other persons than those listed herein, whose original applications are enclosed to be filed with the State Board of Elections; and I further certify that I have not delivered ballots for absentee voting to any person other than the voter himself, by mail or in person, except as provided by law in the case of approved applications received after 6:00 P.M., on Wednesday before the election.

This the .... day of ...., 19......

....
(Signature of chairman of county board of elections)

Sworn to and subscribed before me this .... day of ...., 19....... Witness my hand and official seal.

....
(Signature of officer administering oath)

....
(Title of officer)"

Before noon on the day before a state-wide general election, the chairman of the county board of elections shall send one copy of the list required by this section, together with the original of all applications for absentee ballots received by him, by registered mail to the chairman of the State Board of Elections, at Raleigh, North Carolina. He shall post one copy of the list at a conspicuous place at the county courthouse door, and he shall retain the third copy for himself. (1939, c. 159, s. 6; 1943, c. 751, s. 3; 1963, c. 457, s. 6; 1967, c. 775, s. 1.)

§ 163-233. Lists of absentee ballots received; distribution; delivering executed absentee ballots to appropriate registrars.—Before noon on the day of a state-wide general election, the chairman of the county board of elections shall prepare for each precinct a list, in quadruplicate, of all executed absentee ballots which he has received from absentee voters of the particular precinct prior to noon on the Saturday immediately preceding the election, and, in the case of absentee ballots issued under the provisions of § 163-227 (3), executed ballots which he has received at any time prior to making the list. The chairman shall cause two copies of the appropriate precinct list, together with the unopened container-return envelopes enclosing absentee ballots to be voted in the precinct, to be delivered to the registrar before noon on the day of the election.

If, after preparing and delivering the lists and unopened container-return envelopes as prescribed in the preceding paragraph, the chairman should, before 3:00 P.M on election day, receive additional executed absentee ballots issued under the provisions of § 163-227 (3), he shall prepare, in quadruplicate, a supplemental list for each affected precinct. The chairman shall have two copies of the appropriate supplemental precinct list, together with the unopened container-return envelopes enclosing the ballots recorded on the supplemental list, delivered to the precinct registrar before the polls are closed on election day.

The registrar shall post one copy of the list and one copy of the supplemental list, if any, as required by § 163-154. He shall retain the other copy or copies until all challenges of absentee ballots have been heard and decided.

On election day the chairman of the county board of elections shall mail to the chairman of the State Board of Elections, at Raleigh, North Carolina, one copy of each of the lists prepared under the provisions of this section. He shall retain the remaining copy or copies for his own use. (1939, c. 159, s. 7; 1943, c. 751, s. 4; 1963, c. 457, s. 7; 1967, c. 775, s. 1.)

§ 163-234. Absentee ballots deemed voted upon delivery to registrar; opening container-return envelope and depositing ballots; rejected ballots.—An absentee ballot shall be deemed to be voted when delivered to the precinct registrar on the day of the election, but it shall not be deposited in a ballot box and shall not be counted except in accordance with the procedures outlined in this section.

As soon as the polls are closed, and before they sign the pollbook, the precinct officials shall examine the container-return envelopes, record in the pollbook the names of absentee voters whose ballots are voted, and deposit their ballots in the proper ballot boxes as follows:

(1) The precinct officials shall examine each unopened container-return envelope. If they find that the affidavit and jurat are not executed in due form, or that the voter did not sign his name to the affidavit printed on the envelope, or that the officer before whom the voter executed the affidavit did not affix his seal or the certification of a member of the county board of elections is not complete or is not in compliance with the provisions of G.S. 163-229 (b) (1), the envelope shall be left unopened, and it shall be marked "Rejected."

(2) If the examination required by subdivision (1) reveals that the container-return envelope is in order, one of the judges of election shall call the name of the voter as it appears in the affidavit on the envelope. After examining the registration records, the registrar shall state whether the person bearing that name is duly registered and qualified to vote in the precinct. If the registrar finds him not to be registered, the envelope shall be left unopened, and it shall be marked "Rejected—Not Registered." If the registrar finds him to be registered and qualified, and if his registration or right to vote by absentee ballot is not challenged, the responsible judge shall enter his name in the pollbook with the notation "Absentee Voter." If a challenge is entered, the precinct officials shall proceed as provided in § 163-89.

(3) When the voter's name has been entered in the pollbook under the provisions of subdivision (2), one of the judges of election shall open the container-return envelope by slitting it with a sharp instrument so as not to destroy, tear, or obliterate any part of the affidavit thereon. He shall then remove the ballots from the envelope and, without unfolding them and without examining how they are marked, he shall deposit each in the appropriate ballot box.

(4) All container-return envelopes shall be filed with the county board of elections at the time of the county canvass when the precinct returns are filed. This requirement shall include those container-return envelopes from which ballots have been removed and deposited in ballot boxes, as well as those left unopened and marked "Rejected" or "Rejected—Not Registered" under the provisions of this section and those left unopened and marked "Challenge Sustained" under the provisions of § 163-89. They shall be preserved intact by the chairman of the county board of elections for a period of six months, or longer if any contest shall then be pending concerning the validity of any absentee ballot delivered to him. (1939, c. 159, ss 8, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 547, s. 8; 1967, c. 775, s. 1; c. 851, s. 2.)

Editor's Note. — The 1967 amendment inserted, in subdivision (1), "or the certification of a member of the county board of elections is not complete or is not in compliance with the provisions of G.S. 163-229 (b) (1)."

§ 163-235. Absentee voting where voting machines used.—Persons entitled to vote by absentee ballot in precincts in which voting machines are used shall vote on paper ballots furnished them in accordance with the provisions of this article. At voting places at which voting machines are used, container-return envelopes and absentee ballots shall be received, handled, counted, and filed with the county board of elections in accordance with the provisions of this article for voting places at which voting machines are not used. The total absentee ballot vote for each candidate and proposition shall be added to the totals shown on the voting machines, and the combined totals shall be entered on the official returns for the precinct. (1963, c. 457, s. 9; 1967, c. 775, s. 1.)

§ 163-236. Violations by chairman of county board of elections.—The chairman of the county board of elections shall be sole custodian of blank applications for absentee ballots, official ballots, and container-return envelopes for absentee ballots. He shall issue and deliver blank applications for absentee ballots in strict accordance with the provisions of § 163-227 (4). The issuance of ballots to persons whose applications for absentee ballots have been approved by the county board of elections under the provisions of § 163-230 (3) is the responsibility and duty of the chairman of the county board of elections.

It shall be the duty of the chairman of the county board of elections to keep current all records required of him by this article and to make promptly all reports required of him by this article.

The willful violation of the terms of this section shall constitute a misdemeanor, and upon conviction, the offender shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than 60 days, or both, in the discretion of the court. (1939, c. 159, s. 14; 1963, c. 457, s. 10; 1967, c. 775, s. 1.)

§ 163-237. Certain violations of absentee ballot law made criminal offenses.—(a) False Statements under Oath Made Misdemeanor.—If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement under oath, is required to be made by the provisions of this article, he shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one hundred dollars ($100.00), or imprisoned for not less than 60 days, or both, in the discretion of the court.

(b) False Statements Not under Oath Made Misdemeanor.—If any person, for the purpose of obtaining or voting any official ballot under the provisions of this article, shall willfully sign any printed or written false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than 60 days, or both, in the discretion of the court.

(c) Fraud in Connection with Absentee Vote; Forgery.—Any person attempting to aid and abet fraud in connection with any absentee vote cast or to be cast, under the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned, in the discretion of the court Any person attempting to vote by fraudulently signing the name of a regularly qualified voter shall be guilty of forgery, and be punished accordingly.

(d) Violations Not Otherwise Provided for Made Misdemeanors.—If any person shall willfully violate any of the provisions of this article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, he shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than six months, or both, in the discretion of the court. (1929, c. 164, s. 40; 1939, c. 159, ss. 12, 13, 15; 1967, c. 775, s. 1.)

§ 163-238. Reports of violations to Attorney General and solicitors.—It shall be the duty of the State Board of Elections to report to the Attorney General of North Carolina, and to the solicitor of the appropriate solicitorial district, any violation of this article, or the failure of any person charged with a duty under its provisions to comply with and perform that duty, and it shall be the duty of the solicitor to cause such a person to be prosecuted therefor. (1939, c. 159, s. 16; 1967, c. 775, s. 1.)

§ **163-239. Article 21 relating to absentee voting by servicemen and certain civilians not applicable.**—Except as otherwise provided therein, article 21 of this chapter, relating to absentee registration and voting by servicemen and certain civilians, shall not apply to or modify the provisions of this article. (1963, c. 457, s 11; 1967, c. 775, s. 1.)

§ **163-240. Temporary applicability to civilians.**—Any civilian who is registered to vote no later than 21 days, excluding Saturdays and Sundays, prior to the date of the statewide primary election to be conducted in 1972 shall be authorized to make application for and vote on absentee ballot in the primary in the county of such voter's legal residence under the following conditions:

(1) Applicant must be a registered voter in the county in which application is made.

(2) Applicant must be affiliated with a political party at the time application is made.

(3) Applicant shall make a written request for an application form for absentee ballots not earlier than 35 days nor later than 6:00 p.m. on Tuesday before the primary election.

(4) No one shall be allowed to vote by absentee ballot in any statewide bond election held during the time for which this act is effective.

(5) Ballots shall be issued by U.S. mail only. Applicants shall not be permitted to pick up applications or return ballots in person but shall deposit same in the U.S. mail, addressed to the chairman of the county board of elections in the envelope provided for such purpose. (1971, c. 1247, s. 1.)

Editor's Note.—Section 4, c. 1247, Session Laws 1971, provides that "This act shall be in full force and effect upon ratification and cease to be in effect on and after July 1, 1972."

§ **163-240.1. Second primary application.**—A voter falling in the category defined in G.S. 163-240 and 163-240.2, may apply for absentee ballots for the second primary not earlier than the day a second primary is called and not later than 6:00 p.m. on Tuesday, immediately preceding the second primary election date; applications for ballots, issuance and return of same, must be in the same manner as provided in G.S. 163-240(3) and 163-240(5). (1971, c. 1247, s. 1.)

Cross Reference.—See Editor's note to § 163-240.

§ **163-240.2. Form of application.**—The form of application for persons applying under the provisions of this section shall be the same as the application now required under provisions of G.S. 163-227 for persons applying to vote in the general election. Provided, however, the chairman or executive secretary of each county board of elections shall cause to be printed or stamped on the margin of such application the phrase "I certify that I am now registered as an affiliate of the .... party." A line or space for signature of the voter shall be provided. No voter shall be mailed ballots under this section other than ballots for candidates for nomination in the primary election of the political party with which such voter is affiliated. The official voter registration record in the county shall be the final determination. (1971, c. 1247, s. 1.)

Cross Reference.—See Editor's note to § 163-240.

§ **163-240.3. State Board of Elections to have additional authority.**—The State Board of Elections shall have authority to promulgate rules and regulations for the detailed administration of such requirements contained in this act, including the amendment of application forms. (1971, c. 1247, s. 1.)

Cross Reference.—See Editor's note to § 163-240.

Editor's Note. — The act referred to in this section is Session Laws 1971, c. 1247, effective July 1, 1972, which enacted §§ 163-240 to 163-240.5 and amended § 163-231(b)(1).

§ **163-240.4. Violation a felony.**—Any person who shall, in connection with the primary election in 1972, make fraudulent application under the provisions of this act or any person who encourages another to make false application, or any person who pays or rewards any other person to make false application for absentee ballots shall be guilty of a felony and upon conviction shall be imprisoned in the State's prison not less than six months or fined not less than two thousand dollars ($2,000), or both, in the discretion of the court. (1971, c. 1247, s. 1.)

Cross Reference.—See Editor's note to § 163-240.

Editor's Note.—The act referred to in this section is Session Laws 1971, c. 1247, effective July 1, 1972, which enacted §§ 163-240 to 163-240.5 and amended § 163-231(b)(1).

§ **163-240.5. Other law applicable; State Board authority regarding dates.**—Except as otherwise provided herein, all provisions set out in Article 8 and Article 20 of Chapter 163 applicable in statewide general elections shall be applicable to statewide primary elections, except the State Board of Elections is authorized and shall set all dates for meetings and all deadlines for county boards of elections to the end that the administration of this temporary act shall be orderly and efficient. All such dates shall be publicly announced no later than February 21, 1972. (1971, c. 1247, s. 1.)

Cross Reference.—See Editor's note to § 163-240.

§§ **163-241 to 163-244**: Reserved for future codification purposes.

ARTICLE 21.

Military Absentee Registration and Voting in Primary and General Elections.

§ **163-245. Persons in armed forces, their wives, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.**—(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of this section, shall be entitled to register by mail and to vote by military absentee ballot in the manner provided in this article.

(b) The provisions of this article shall apply to the following persons:

(1) Persons serving in the armed forces of the United States, including (but not limited to) the army, the navy, the air force, the marine corps, the coast guard, the Army Nurse Corps, the Navy Nurse Corps, the Women's Navy Reserve, the Marine Corps Women's Reserve, the Women's Army Corps, the Merchant Marine, and members of the national guard and military reserve who on the day of a primary or general election are absent on active duty.

(2) Wives of men serving in the armed forces of the United States residing outside the counties of their husbands' voting residence.

(3) Disabled war veterans in United States government hospitals.

(4) Civilians attached to and serving outside the United States with the armed forces of the United States.

(5) Members of the Peace Corps. (1941, c. 346, ss. 1, 1a; 1943, c. 503, s. 1; 1945, c. 758, s. 4; 1953, c. 908; 1963, c. 457, s. 16; 1967, c. 775, s. 1.)

Editor's Note.—For comment on former §§ 163-70 to 163-77, relating to absentee voting in primaries by voters in military and naval service, see 19 N.C.L. Rev. 480.

§ 163-246. Provisions of article 20 applicable except as otherwise provided; State Board of Elections to adopt regulations. — Except as otherwise provided in this article, registration by mail and absentee voting by individual to whom this article is applicable shall be governed by the provisions of article 20 of this chapter. By way of illustration rather than limitation, the provisions of this paragraph shall apply to the form of absentee ballots, certificates and container-return envelopes; the manner of depositing and voting military absentee ballots; the counting and certifying of results; the hearing of challenges; and the preservation of container-return envelopes in which executed military absentee ballots are transmitted.

The State Board of Elections is authorized to adopt and promulgate whatever rules and regulations (not in conflict with other provisions of this chapter) it may deem necessary to carry out the true intent and purpose of this article. (1941, c. 346, ss. 7-10; 1943, c. 503, ss. 7, 8; 1963, c. 457, s. 15; 1967, c. 775, s. 1.)

§ 163-247. Methods of applying for absentee ballots.—An individual entitled to exercise the rights conferred by this article and who is absent from the county of his residence may apply for absentee ballots in either of the ways provided in this section.

(1) Federal Post Card Application Form.—At any time prior to the state-wide primary or general election in which he seeks to vote the applicant may make and sign a written application to the Secretary of State for absentee ballots on the post card form prescribed in Public Law 712 of the 77th Congress. Upon receiving such an application, the Secretary of State shall record the applicant's name and residence address on a record maintained for that purpose and immediately transmit the application to the State Board of Elections. Upon receiving such an application from the Secretary of State, the State Board of Elections shall transmit it to the chairman of the board of elections of the county in which the applicant has his residence, together with instructions for handling the application under the provisions of this article.

(2) Application to Chairman of County Board of Elections.—In lieu of applying on the federal post card as provided in the preceding subdivision, at any time prior to the state-wide primary or general election in which he seeks to vote the applicant may make and sign a written application to the chairman of the board of elections of the county of his residence upon a form prepared and furnished him upon request by the county board of elections. This form shall require the applicant's signature and shall elicit from him:

a. A request for absentee ballots to be voted in a specified state-wide primary or general election.

b. A statement of his political party affiliation if he seeks to vote by absentee ballot in a primary election.

c. A statement of his membership in the armed forces of the United States, or his membership in one of the other categories to which this article is made applicable in § 163-245.

d. A statement of the precinct in which he is registered to vote, or, if the applicant is not registered, a statement of his address before entering military or other qualifying service and the period of time he resided at that address.

e. A statement of the address to which the absentee ballots should be mailed.

In lieu of using a form prepared and furnished by the county board of elections, the voter may apply in an informal writing. If the written application is signed by the voter and if it contains all the information required by this subdivision, it shall be regarded as sufficient to permit the chairman of the county board of elections to act upon it. (1941, c. 346, ss. 2, 3; 1943, c. 503, s. 2; 1963, c. 457, s. 12; 1967, c. 775, s. 1.)

§ 163-248. Register, ballots, container-return envelopes, and instruction sheets.—(a) Register of Military Absentee Ballot Applications and Ballots Issued.—The State Board of Elections shall furnish the chairman of the board of elections in each county of the State with a book to be called the register of military absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this article. In lieu of furnishing this register, the State Board of Elections may provide for a separate military section in the register furnished under the provisions of § 163-228 which shall be used for the same purpose.

The register of military absentee ballot applications and ballots issued, whether contained in a separate book or maintained as a separate part of the register furnished under the provisions of § 163-228, shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time.

(b) Absentee Ballot Form.—Persons entitled to vote by absentee ballot under the terms of this article shall be furnished with regular official ballots; separate or distinctly marked absentee ballots shall not be used. The State Board of Elections and the county boards of elections shall have all necessary ballots printed and in the hands of the proper election officials not later than, in the case of a primary election, 10 days after the time has expired for the filing of candidacy for county office, and in the case of a general election, the first day of September immediately prior thereto.

(c) Container-Return Envelope.—The county board of elections shall print a sufficient number of envelopes in which persons casting military absentee ballots may transmit their marked ballots to the chairman of the county board of elections. In the case of a primary election, the container-return envelopes shall be printed and available for use not later than 10 days after the time has expired for the filing of candidacy for county office, and in the case of a general election, not later than the first day of September immediately prior thereto. Each container-return envelope shall be printed in accordance with the following instructions:

(1) On one side shall be arranged identified spaces in which the chairman of the county board of elections may insert the name of the applicant, the number assigned his application, and the designation of the precinct in which his ballots are to be voted.

(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

"Certificate of Absentee Voter

I, ..., do hereby certify that I am a resident and qualified voter in .... precinct, ... County, North Carolina, and that I am [check whichever of the following statements is correct]

[ ] Serving in the armed forces of the United States

[ ] The wife of a member of the armed forces of the United States residing outside the county of my husband's residence

[ ] A disabled war veteran in a United States government hospital

[ ] A civilian attached to and serving outside the United States with the armed forces of the United States

[ ] A member of the Peace Corps

I further certify that I am affiliated with the .... party. [To be completed only if applicant seeks to vote in the primary of the political party to which he belongs.]

I further certify that the following is my official address: ....
[Unit (Co., Sq., Trp., Bn., etc.), governmental agency, ...
.... or office]
....
[Military base, station, camp, fort, ship, airfield, etc.]
....
[Street number, APO, or FPO number]
....
[City, postal zone, State, and zip code]

I further certify that I made application for absentee ballots and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instruction.

Witness my hand in the presence of .... [Insert name and rank of witnessing officer] this .... day of ...., 19.....

....
(Signature of voter)

Witness: ....
(Signature of witnessing officer)
Rank or title of witnessing officer: ....
Unit to which witnessing officer is assigned: ....

Note: This certificate may be witnessed by any commissioned officer or any noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces of the United States."

(d) Instruction Sheets.—The county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters covered by the provisions of this article are to prepare absentee ballots and return them to the chairman of the county board of elections. In the case of a primary, the instruction sheets shall be printed and available for use not later than 10 days after the time has expired for the filing of candidacy for county office, and in the case of a general election, not later than the first day of September immediately prior thereto. (1929, c. 164, s. 39; 1941, c. 346, ss. 2, 3, 4, 5, 6; 1943, c. 503, s. 3; 1963, c. 457, ss. 12, 13, 14; 1967, c. 775, s. 1.)

§ 163-249. Consideration and approval of applications and issuance of absentee ballots.—The procedure to be followed in receiving applications for absentee ballots under this article, passing upon their validity, and issuing absentee ballots shall be governed by the provisions of this section.

(1) Record of Applications Received and Ballots Issued.—Upon receipt of a voter's written application for absentee ballots in either of the forms permitted by § 163-247, the chairman of the county board of elections shall promptly enter in the register of military absentee ballot applications and ballots issued:

a. Name of voter applying for absentee ballots.

b. Applicant's political party affiliation as stated in an application for ballots in a primary.

c. Number assigned voter's application. (Numbers assigned applications received under the provisions of this article shall be chosen so as not to be identical with numbers assigned applications received under the provisions of article 20.)

d. Precinct in which applicant is registered if he is already registered, or precinct in which applicant is registered by the chairman of the county board of elections under the provisions of subdivisions (2) and (3) of this section.
e. Address to which ballots are to be mailed.
f. Statement of basis on which applicant asserts his qualifications for obtaining absentee ballots under the provisions of this article.
g. Date application for ballots is received by chairman.

(2) Determination of Validity of Applications for Absentee Ballots; Handling Applications for Persons Not Registered.—This chairman of of the county board of elections shall pass upon the validity of all applications for absentee ballots received under the provisions of this article, and he shall not delegate this responsibility.

If the chairman finds that the applicant is a qualified voter of the county, that he is registered in the precinct stated in his application, that the assertions in his application are true, that they demonstrate that he is entitled to vote by absentee ballot under the terms of this article, and that his application is in proper form, the chairman shall approve the application for absentee ballots.

If the chairman finds that the applicant is not registered to vote in the precinct in which he declares he is a resident, the chairman shall make a reasonable investigation as to the applicant's residence. If the chairman determines that the applicant is a resident of the precinct asserted, that he is eligible to register and vote under the Constitution and statutes of this State, and that his application is otherwise in order, the chairman shall register him according to the procedure specified in subdivision (3) of this section and approve his application for absentee ballots.

(3) Record of Chairman's Decisions; Registration by Chairman.—At the time the chairman of the county board of elections makes his decision on an application for absentee ballots, he shall enter in the appropriate column in the register of military absentee ballot applications and ballots issued opposite the name of the applicant a notation of whether his application was "Approved" or "Disapproved." In cases in which the chairman determines that an unregistered applicant is entitled to register, he shall also note in the appropriate column of the register the designation of the precinct in which the applicant is entitled to vote. This entry shall constitute registration and shall entitle an otherwise qualified applicant to receive absentee ballots.

(4) Delivery of Absentee Ballots and Container-Return Envelope to Applicant.—When the chairman of the county board of elections approves an application for military absentee ballots he shall promptly issue and transmit them in accordance with the following instructions:

a. On the top margin of each ballot the applicant is entitled to vote, the chairman shall write or type the words "Absentee Ballot No. ...." and insert in the blank space the number assigned the applicant's application in the register of military absentee ballot applications and ballots issued. He shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter.
b. The chairman shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon,

the absentee voter's name, his application number, and the designation of the precinct in which his ballots are to be voted. The chairman shall leave the container-return envelope holding the ballots unsealed.

c. The chairman shall then place the unsealed container-return envelope holding the ballots, together with printed instructions for voting and returning the ballots, in an envelope addressed to the applicant at the address stated in his application, seal the envelope, and mail it at the expense of the county board of elections. (1941, c. 346, ss. 2, 3, 4, 5; 1943, c. 503, s. 3; 1963, c. 457, ss. 12, 13; 1967, c. 775, s. 1.)

§ 163-250. Voting absentee ballots and transmitting them to chairman of county board of elections.—(a) Procedure for Voting Absentee Ballots.—In the presence of any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces of the United States, the voter shall:

(1) Mark his ballots, or cause them to be marked in his presence according to his instructions.

(2) Fold each ballot separately, or cause each of them to be folded in his presence.

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in his presence.

(4) Make and subscribe the certificate printed on the container-return envelope according to the provisions of § 163-248 (c).

The officer witnessing the voter's signature shall then complete the form on the container-return envelope by signing his name in the appropriate place and entering his rank or title and the designation of the unit to which he is assigned.

(b) Transmitting Executed Absentee Ballots to Chairman of County Board of Elections.—When executed and witnessed in accordance with the provisions of subsection (a) of this section, the sealed container-return envelope in which executed absentee ballots have been placed shall be mailed by the voter to the chairman of the county board of elections who issued them. (1941, c. 346, ss. 7-10; 1963, c. 457, s. 15; 1967, c. 775, s. 1.)

§ 163-251. Certified list of approved military absentee ballot applications; record of ballots received; disposition of list; list constitutes registration.—(a) Preparation of List.—Before noon on the day of a statewide primary or general election, the chairman of the county board of elections shall prepare for each precinct a list, in quadruplicate, of all applications for military absentee ballots which he has received, entered in the register of military absentee ballot applications and ballots issued, and approved. This list shall be entitled "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued." By the name of each applicant whose executed military absentee ballots have been returned to him the chairman shall enter the notation "Ballots Returned." At the end of the list the chairman shall execute the following certificate under oath:

"State of North Carolina
County of ....

I, ..., chairman of the .... county board of elections, do hereby certify that the foregoing is a list of all applications filed with me for absentee ballots under the provisions of the Military Absentee Ballot Law to be voted in the .... [insert either 'primary' or 'general,' whichever is appropriate] election on the .... day of ...., 19..... I further certify:

1. That I have issued military absentee ballots to no other persons than those

listed therein, whose original applications are herewith filed with the State Board of Elections;

2. That I have not delivered military absentee ballots to any person other than the voter himself, by mail or in person;

3. That I have received executed ballots from those absentee voters whose names are marked on this list with the notation 'Ballots Returned,' whose unopened container-return envelopes have been delivered to the appropriate precinct registrars for voting;

4. That this list constitutes the only precinct registration of military absentee voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.

This the .... day of ...., 19.....

....
(Signature of chairman of
county board of elections)

Sworn to and subscribed before me this .... day of ...., 19...
Witness my hand and official seal.

....
(Signature of officer
administering oath)

(SEAL)

....
(Title of officer)"

(b) Distribution of List.—Before noon on the day of the primary or general election in which the military absentee ballots are to be cast, the chairman of the county board of elections shall send one copy of the list required by this section together with the original of all applications for military absentee ballots received by him, by registered mail to the chairman of the State Board of Elections at Raleigh, North Carolina. Also before noon he shall see that two copies of the appropriate precinct list, together with the unopened container-return envelopes enclosing military absentee ballots to be voted in the precinct, are delivered to the registrar at the voting place. The chairman shall retain one copy for himself.

If, after preparing and delivering the lists, original applications, and unopened container-return envelopes as prescribed in the preceding paragraph, the chairman should, before 3:00 P. M. on primary or election day, receive additional executed military absentee ballots, he shall prepare, in quadruplicate, a supplemental list for each affected precinct. The chairman shall immediately send one copy of the supplemental list required by this section, together with the original of all applications for military absentee ballots entered thereon, by registered mail to the chairman of the State Board of Elections, at Raleigh, North Carolina. He shall see that two copies of the appropriate supplemental precinct list, together with the unopened container-return envelopes enclosing the ballots recorded on the supplemental list, are delivered to the precinct registrar before the polls are closed on primary or election day. He shall retain one copy of each supplemental list for himself.

The registrar shall post one copy of the list and one copy of the supplemental list, if any, as required by § 163-154. He shall retain the other copy or copies until all challenges of military absentee ballots have been heard and decided. The precinct posting of this list shall be sufficient to validate the ballots of absentee voters listed thereon when their ballots are in all other respects regular.

(c) List Constitutes Registration.—The "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued" prescribed by this section, when delivered to the registrars of the various precincts, shall constitute the only precinct registration of the military absentee voters listed thereon whose names are not already entered in the registration records of the appropriate precinct. Registrars shall not add the names of persons listed on the military absentee list to the regular registration books of their precincts. (1941, c. 346, ss. 7-10, 12, 13; 1943, c. 503, ss. 4, 5; 1963, c. 457, s. 15; 1967, c. 775, s. 1.)

§ 163-252. Unlawful absentee voting in primary made misdemeanor.—Any person not covered by the provisions of § 163-245 who shall vote or attempt to vote by absentee ballot in any primary shall be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars ($200.00) or imprisoned for not more than six months, or both, in the discretion of the court. (1941, c. 346, s. 14; 1967, c. 775, s. 1.)

§ 163-253. Article inapplicable to persons after change of status; reregistration required.—Upon discharge from the armed forces of the United States or termination of any other status qualifying him to register and vote by absentee ballot under the provisions of this article, the voter shall not be entitled to vote by military absentee ballot, and if he was registered under the provisions of this article his registration shall become void and he shall be required to register under the provisions of article 7 before being entitled to vote in any primary or election. (1943, c. 503, s. 12; 1967, c. 775, s. 1.)

§§ 163-254 to 163-258: Reserved for future codification purposes.

SUBCHAPTER VIII. CRIMINAL OFFENSES.

Article 22.

Corrupt Practices and Other Offenses against the Elective Franchise.

§ 163-259. Definitions. — When used in this article:

(1) The term "campaign committee" includes any committee, association or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any primary, general or special election;

(2) The term "candidate" means an individual whose name is presented for any office to be voted upon any ballot at any primary, general or special election;

(3) The term "contribution" means any gift, payment, subscription, loan, advance, deposit of money, or anything of value, and includes any contract, promise or agreement to give, subscribe for, pay, loan, advance or deposit any money or other thing of value to or for the benefit of any candidate at any primary, general or special election, and whether or not said contract, promise or agreement is legally enforceable;

(4) The term "expenditure" means a payment, distribution, loan, advance, deposit or gift of money or anything else of value whatsoever, and includes a contract, promise or agreement to pay, distribute, give, loan, advance, or deposit any money or anything of value whatsoever, and whether or not such contract, promise, or agreement is legally enforceable;

(5) The term "person" includes an individual, partnership, committee, association, corporation or any other organization or group of persons. (1931, c. 348, s. 2; 1967, c. 775, s. 1.)

§ 163-260. Detailed accounts to be kept by candidates and others.—It shall be the duty of every candidate and the chairman and treasurer of any and every campaign committee to keep a detailed and exact account of:

(1) All contributions made to or for such candidate or committee;

(2) The name and address of every person making any such contribution, and the date thereof;

(3) All expenditures made by or on behalf of such candidate or committee;

(4) The name and address of every person to whom any such expenditure is made, and the date thereof. (1931, c. 348, s. 3; 1967, c. 775, s. 1.)

§ 163-261. Detailed accounting to candidates of persons receiving contributions.—Every person who receives a contribution for a candidate or for a campaign committee in any primary, general or special election shall render such candidate or campaign committee, within five days after receipt of such contribution, a detailed account thereof, including the name and address of the person making such contribution. (1931, c. 348, s. 4; 1967, c. 775, s. 1.)

§ 163-262. Detailed accounting of persons making expenditures.—Every person who makes any expenditure in behalf of any candidate or campaign committee in any primary, general or special election shall render to such candidate or campaign committee, within five days after making such expenditure, a detailed account thereof, including the name and address of the person to whom such expenditure was made. (1931, c. 348, s. 5; 1967, c. 775, s. 1.)

§ 163-263. Statements under oath of preprimary expenses of candidates; report after primary.—It shall be the duty of every person who shall be a candidate for nomination in any primary for any federal, State or district office, or for the State Senate in a district composed of more than one county, except where there shall be agreement for rotation as provided in § 163-116, to file, under oath, 10 days before such primary, with the Secretary of State, an itemized statement of all expenditures made by him or which he knows to have been made by anyone for him, and of all contributions made to him, directly or indirectly, and also to file, under oath, within 20 days after such primary, with the Secretary of State, an itemized statement of all expenditures made by him or which he knows to have been made by anyone else for him, and also of all contributions made to him, directly or indirectly, by any person, with detailed account of such contributions and expenditures as set out in § 163-264. And it shall be the duty of every person who shall be a candidate for nomination for the State Senate, except those to whom the preceding sentence applies, for the House of Representatives, and for any county office, to file a like statement with the clerk of the superior court of the county of his residence at the times hereinbefore prescribed for filing such statements by candidates for federal, State and district offices as set out in the preceding sentence: Provided, however, that candidates for the House of Representatives in multi-county representative districts shall file copies of the said statement with the clerk of superior court of each county in the representative district.

It shall be the duty of the chairman of the county board of elections to send a written notice to each candidate in a primary election who filed a notice of candidacy with said chairman, and who had one or more candidates to run against the candidate in the primary, of this requirement to file his or her primary campaign statement of expenses with the clerk of the superior court both before and after the primary. Such notice shall not be required where an unopposed candidate did not have to run in the primary and was nominated without party opposition. (1931, c. 348, s. 6; 1959, c. 1203, s. 10; 1966, Ex. Sess., c. 5, s. 15; 1967, c. 775, s. 1.)

§ 163-264. Contents of such statements.—The statement of contributions and expenditures as required by the preceding sections of this article shall be itemized as follows:

(1) The name and address of each person who has made a contribution to or for such candidate or to or for his campaign committee within the calendar year, together with the amount and date of such contribution;

(2) The total sum of all contributions made to or for such candidate or to or for his campaign committee during the calendar year;

(3) The name and address of each person to whom, during the calendar year, an expenditure has been made by or in behalf of such candidate or by or in behalf of his campaign committee, and the amount, date, and purpose of such expenditure;

(4) The name and address of each person by whom an expenditure has been made during the calendar year in behalf of such candidate or his campaign committee and reported to such candidate or campaign committee, and the amount, date, and purpose of such expenditure;

(5) The total sum of all expenditures made during the calendar year in behalf of such candidate or his campaign committee by any person and reported to such candidate or his campaign committee, and the amount, date, and purpose of such expenditure;

(6) The total sum of all expenditures made by such candidate or his campaign committee, or any person in his behalf during the calendar year. (1931, c. 348, s. 7; 1967, c. 775, s. 1.)

§ **163-265. Statements required of campaign committees covering more than one county; verification of statements required.**—A like statement as that required in the preceding section [§ 163-264] shall be filed by any and all campaign committees as hereinbefore defined with the Secretary of State not more than 15 days nor less than 10 days before any primary, general or special election, and not more than 20 days after any such primary, general or special election, if said campaign committee is making expenditures in more than one county; and if such campaign committee is making expenditures in only one county a like or similar report so itemized shall be made within the same periods to the clerk of the superior court of such county.

All of the statements or reports of contributions or expenditures as in this article required of any candidate or campaign committee must be verified by the oath or affirmation of the person filing such statement or report, taken before any officer authorized to administer oaths. (1931, c. 348, s. 8; 1967, c. 775, s. 1.)

§ **163-266. Failure to report contributions or expenditures made misdemeanor.**—(a) It shall be unlawful for any person to make any contribution or expenditure to aid, or in behalf of any candidate or campaign committee, in any primary, general or special election, unless the same be reported immediately to such candidate or campaign committee, to the end that it may be included by him or it in the reports required of him by law. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.

(b) It shall be unlawful for any candidate or any chairman or treasurer of a campaign committee to fail to make under oath the report or reports required of him or it by §§ 163-263 to 163-265, or for any campaign committee to fail to furnish to a candidate a duplicate copy of the report to be made by it or its chairman or treasurer. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1931, c. 348, s. 9; 1951, c. 983, s. 1; 1967, c. 775, s. 1.)

§ **163-267. Secretary of State to report failure to file reports.**—It shall be the duty of the Secretary of State after the time has expired for the filing of statements of campaign contributions and expenditures with the Secretary of State by candidates in a primary election as is provided in §§ 163-263 to 163-265, to immediately therefter report to the Attorney General of North Carolina the names and addresses of all candidates for federal, State, or district offices who have failed to file such statement in compliance with the provisions of said sections Upon receipt of said report from the Secretary of State, it shall be the duty of the Attorney General, in accordance with the provisions of § 163-268, to notify the proper prosecuting officer who shall prosecute any person violating the provisions of the preceding sections of this article. (1931, c. 348, s. 9; 1951, c. 983, s. 1; 1967, c. 775, s. 1.)

§ **163-268. Secretary of State and superior court clerks to request reports; Attorney General and solicitors to prosecute.** — It shall be the duty of the Secretary of State and the several clerks of the superior court to call upon the candidates and chairmen and treasurers of campaign committees for the reports required to be made by §§ 163-263 to 163-265. If any candidate or chairman or treasurer of a campaign committee shall fail or neglect to make to the Secretary of State the reports required by said sections, then the Secretary of State shall bring such failure to the attention of the Attorney General, whose duty it shall then be to initiate a prosecution against such candidate or chairman or treasurer of such campaign committee for such violation of this article. If the Attorney General shall be a candidate in any such primary or election, such duty as herein required to be performed by him with respect to any contest in which he participates shall be performed by the solicitor of the solicitorial district of which Wake County is a part. If a candidate or the chairman or treasurer of a campaign committee fails to make the report to the clerk of the superior court as required by said sections then said clerk of the superior court shall bring such failure to the attention of the solicitor of the solicitorial district in which such county is a part, and said solicitor shall institute a prosecution for violation of said sections. (1931, c. 348, s. 13; 1967, c. 775, s. 1.)

§ **163-269. Violations by corporations.** — It shall be unlawful for any corporation doing business in this State, either under domestic or foreign charter, directly or indirectly to make any contribution or expenditure in aid or in behalf of any candidate or campaign committee in any primary or election held in this State, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used, or for any contribution or expenditure so made; or for any officer, director, stockholder, attorney or agent of any corporation to aid, abet, advise or consent to any such contribution or expenditure, or for any person to solicit or knowingly receive any such contribution or expenditure.

Any officer, director, stockholder, attorney or agent of any corporation aiding or abetting in any contribution or expenditure made in violation of this section shall, in addition to being guilty of a misdemeanor as hereinafter set out, be liable to such corporation for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder thereof. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1931, c. 348, s. 9; 1951, c. 983, s. 1; 1967, c. 775, s. 1.)

§ **163-270. Using funds of insurance companies for political purposes.**—No insurance company or association, including fraternal beneficiary associations, doing business in this State shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint-stock company, or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. An officer, director, stockholder, attorney or agent for any corporation or association which violates any of the provisions of this section, who participates in, aids, abets, advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars ($1,000.00).

Any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company or association for the amount so contributed. The Commissioner of Insurance may revoke the license of any company violating this section. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon criminal investigation or proceeding. (1907, c. 121; C. S., s. 4199; 1967, c. 775, s. 1.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in the second paragraph.

§ 163-271. Intimidation of voters by officers made misdemeanor.—It shall be unlawful for any person holding any office, position, or employment in the State government, or under and with any department, institution, bureau, board, commission, or other State agency, or under and with any county, city, town, district, or other political subdivision, directly or indirectly, to discharge, threaten to discharge, or cause to be discharged, or otherwise intimidate or oppress any other person in such employment on account of any vote such voter or any member of his family may cast, or consider or intend to cast, or not to cast, or which he may have failed to cast, or to seek or undertake to control any vote which any subordinate of such person may cast, or consider or intend to cast, or not to cast, by threat, intimidation, or declaration that the position, salary, or any part of the salary of such subordinate depends in any manner whatsoever, directly or indirectly, upon the way in which such subordinate or any member of his family casts, or considers or intends to cast, or not to cast his vote, at any primary or election. Any person violating this section shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, in the discretion of the court. (1933, c. 165, s. 25; 1967, c. 775, s. 1.)

§ 163-272: Repealed by Session Laws 1971, c. 872, s. 3, effective October 1, 1971.

§ 163-273. Offenses of voters; interference with voters; penalty.— (a) Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. It shall be unlawful:

(1) For a voter, except as otherwise provided in this chapter, to allow his ballot to be seen by any person.

(2) For a voter to take or remove, or attempt to take or remove, any ballot from the voting enclosure.

(3) For any person to interfere with, or attempt to interfere with, any voter when inside the voting enclosure.

(4) For any person to interfere with, or attempt to interfere with, any voter when marking his ballots.

(5) For any voter to remain longer than the specified time allowed by this chapter in a voting booth, after being notified that his time has expired.

(6) For any person to endeavor to induce any voter, while within the voting enclosure, before depositing his ballots, to show how he marks or has marked his ballots.

(7) For any person to aid, or attempt to aid, any voter by means of any

mechanical device, or any other means whatever, while within the voting enclosure, in marking his ballots.

(b) Election officers shall cause any person committing any of the offenses set forth in subsection (a) of this section to be arrested and shall cause charges to be preferred against the person so offending in a court of competent jurisdiction. (1929, c. 164, s 29; 1967, c. 775, s. 1.)

§ 163-274. Certain acts declared misdemeanors.—Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. It shall be unlawful:

(1) For any person to fail, as an officer or as a judge or registrar of a primary or election, or as a member of any board of elections, to prepare the books, ballots, and return blanks which it is his duty under the law to prepare, or to distribute the same as required by law, or to perform any other duty imposed upon him within the time and in the manner required by law;

(2) For any person to continue or attempt to act as a judge or registrar of a primary or election, or as a member of any board of elections, after having been legally removed from such position and after having been given notice of such removal;

(3) For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections;

(4) For any person to be guilty of any boisterous conduct so as to disturb any member of any election board or any registrar or judge of election in the performance of his duties as imposed by law;

(5) For any person to bet or wager any money or other thing of value on any election;

(6) For any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppose any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which he may have failed to cast;

(7) For any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such charge;

(8) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or election;

(9) For any person to give or promise, in return for political support or influence, any political appointment or support for political office;

(10) For any chairman of a county board of elections or other returning officer to fail or neglect, willfully or of malice, to perform any duty, act, matter or thing required or directed in the time, manner and form in which said duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns thereof;

(11) For any clerk of the superior court to refuse to make and give to any person applying in writing for the same a duly certified copy of the

returns of any primary or election or of a tabulated statement to a primary or election, the returns of which are by law deposited in his office, upon the tender of the fees therefor;

(12) For any person willfully and knowingly to impose upon any blind or illiterate voter a ballot in any primary or election contrary to the wish or desire of such voter, by falsely representing to such voter that the ballot proposed to him is such as he desires. (1931, c. 348, s. 9; 1951, c. 983, s. 1; 1967, c. 775, s. 1.)

Indictment for Disturbing Registrar by Boisterous Conduct. — An indictment charging that defendant unlawfully and willfully by his own boisterous and violent conduct disturbed a named registrar while in the performance of her duties in examining a named applicant for registration was insufficient, although charging the offense in the words of the statute, since such words did not in themselves inform the accused of the specific offense of which he was accused so as to enable him to prepare his defense or plead his conviction or acquittal as a bar to further prosecution for the same offense. State v. Walker, 249 N.C. 35, 105 S.E.2d 101 (1958).

§ **163-275. Certain acts declared felonies.**—Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a felony and upon conviction shall be imprisoned in the State's prison not less than four months or fined not less than one thousand dollars ($1,000.00), or both, in the discretion of the court. It shall be unlawful:

(1) For any person fraudulently to cause his name to be placed upon the registration books of more than one election precinct or fraudulently to cause or procure his name or that of any other person to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such person to vote legally therein, or to impersonate falsely another registered voter for the purpose of voting in the stead of such other voter;

(2) For any person to give or promise or request or accept at any time, before or after any such primary or election, any money, property or other thing of value whatsoever in return for the vote of any elector;

(3) For any person who is an election officer, a member of an election board or other officer charged with any duty with respect to any primary or election, knowingly to make any false or fraudulent entry on any election book or any false or fraudulent returns, or knowingly to make or cause to be made any false statement on any ballot, or to do any fraudulent act or knowingly and fraudulently omit to do any act or make any report legally required of such person;

(4) For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election;

(5) For any person convicted of a crime which excludes him from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law;

(6) For any person to take corruptly the oath prescribed for voters, and the person so offending shall be guilty of perjury;

(7) For any person with intent to commit a fraud to register or vote at more than one precinct or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election;

(8) For any registrar or any clerk or copyist to make any entry or copy with intent to commit a fraud;

(9) For any election official or other officer or person to make, certify, deliver or transmit any false returns of any primary or election, or to

make any erasure, alteration, or conceal or destroy any election ballot, book, record, return or process with intent to commit a fraud;

(10) For any person to assault any registrar, judge of election or other election officer while in the discharge of his duty in the registration of voters or in conducting any primary or election;

(11) For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any registrar, judge of election or other election officer in the discharge of his duties in the registration of voters or in conducting any primary or election;

(12) For any registrar, judge of election, member of a board of elections, assistant, marker, or other election official, directly or indirectly, to seek, receive or accept money or the promise of money, the promise of office, or other reward or compensation from a candidate in any primary or election or from any source other than such compensation as may be provided by law for his services;

(13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting. (1901, c. 89, s. 13; Rev., s. 3401; 1913, c. 164, s. 2; C. S., s. 4186; 1931, c. 348, s. 10; 1943, c. 543; 1965, c. 899; 1967, c. 775, s. 1.)

§ 163-276. Convicted officials; removal from office.—Any public official who shall be convicted of violating any provision of article 13 or 22 of this chapter, in addition to the punishment provided by law, shall be removed from office by the judge presiding, and, if the conviction is for a felony, shall be disqualified from voting until his citizenship is restored as provided by law, and if the conviction is for a misdemeanor, he shall be disqualified from voting for a period of two years. (1949, c. 504; 1967, c. 775, s. 1.)

§ 163-277. Compelling self-incriminating testimony; person so testifying excused from prosecution.—No person shall be excused from attending or testifying or producing any books, papers or other documents before any court or magistrate upon any investigation, proceeding or trial for the violation of any of the provisions of this article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him, but such person may be subpoenaed and required to testify by and for the State relative to any offense arising under the provisions of this article; but such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding, but such person so compelled to testify with respect to any acts of his own shall be immune from prosecution on account thereof, and shall be pardoned for any violation of law about which such person shall be so required to testify. (1931, c. 348, s. 11; 1967, c. 775, s. 1.)

Editor's Note.—For a general discussion of the limits to self-incrimination, see 15 N.C.L. Rev. 229.

§ 163-278. Duty of Attorney General and solicitors to prosecute violations of article.—It shall be the duty of the Attorney General, the solicitors of the several solicitorial districts, and all prosecuting attorneys of courts inferior to the superior court, to make diligent inquiry and investigation with respect to any violations of this article, and said officers are authorized and empowered to subpoena and compel the attendance of any person or persons before them for the purpose of making such inquiry and investigation. (1931, c. 348, s. 12; 1967, c. 775, s. 1.)

SUBCHAPTER IX. MUNICIPAL ELECTIONS.

Article 23.

Municipal Election Procedure.

§ **163-279. Time of municipal primaries and elections.** — (a) Primaries and elections for offices filled by election of the people in cities, towns, incorporated villages, and special districts shall be held in 1973 and every two years thereafter on the following days:

(1) If the election is nonpartisan and decided by simple plurality, the election shall be held on Tuesday after the first Monday in November.

(2) If the election is partisan, the election shall be held on Tuesday after the first Monday in November, the first primary shall be held on the sixth Tuesday before the election, and the second primary, if required, shall be held on the third Tuesday before the election.

(3) If the election is nonpartisan and the nonpartisan primary method of election is used, the election shall be held on Tuesday after the first Monday in November and the nonpartisan primary shall be held on the fourth Tuesday before the election.

(4) If the election is nonpartisan and the election and runoff election method of election is used, the election shall be held on the fourth Tuesday before the Tuesday after the first Monday in November, and the runoff election, if required, shall be held on Tuesday after the first Monday in November.

(b) Notwithstanding the provisions of subsection (a), the next regular municipal primary and election in Winston-Salem shall be held at the time of the primary and election for county officers in 1974. Officers elected at that time shall serve terms of office expiring on the first Monday in December, 1977. Beginning in 1977, municipal primaries and elections in Winston-Salem shall be held at the times provided in this section.

(c) Officers of sanitary districts elected in 1970 shall hold office until the first Monday in December, 1973, notwithstanding G.S. 130-126. Beginning in 1973, sanitary district elections shall be held at the times provided in this section. (1971, c. 835, s. 1.)

Editor's Note. — Session Laws 1971, c. 835, ss. 2 and 3 provide:

"Sec. 2. The terms of city officers elected during the calendar year 1971 or during the calendar year 1972 for terms to expire at any time during the calendar year 1973 are hereby extended until their successors in office are elected and qualified pursuant to this act. The terms of city officers elected during the calendar year 1971 for terms to expire at any time during the calendar year 1975 are hereby extended until their successors in office are elected and qualified pursuant to this act. The terms of city officers elected during the calendar year 1972 for terms to expire at any time during the calendar year 1974 are hereby reduced to expire at such time as their successors in office are elected and qualified pursuant to this act, and their offices shall limit or prohibit the alteration of terms of office of city officers pursuant to Part 4 of Article 5 of Chapter 160A of the General Statutes.

"Sec. 3. It is the intent of this act to make uniform the laws governing the registration of voters for and the conduct of elections in cities, towns, incorporated villages, and special districts in this State. To this end, all laws and clauses of laws, whether general, private, special or local are repealed to the extent that they are in conflict with or superseded by this act, except that provisions of town or city charters providing for elections during the calendar year 1972 shall continue in effect until such 1972 elections have been conducted and their results declared."

§ **163-280. Municipal boards of elections.**—(a) In each city, town, and incorporated village of this State that is authorized and elects to conduct its own elections in the manner provided by G.S. 163-285, there shall be a municipal board of elections consisting of three persons of good moral character, who are registered voters of the city. Members of municipal boards of elections shall be appointed by the city council on Friday before the tenth Saturday preceding each regular municipal primary or election, and their terms of office shall be for two years and continue until their successors are appointed.

No person shall serve as a member of a municipal board of elections who holds any elective office, who is a candidate for any elective public office, who is a member of a county board of elections, or who is serving as campaign manager for any candidate in any election.

(b) On the Monday following the ninth Saturday before the regular municipal primary or election, the newly appointed members of the municipal board of elections shall meet at the city hall or some other place specified by the city council and shall take the following oath of office:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain, and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the .... municipal board of elections to the best of my knowledge and ability, according to law. So help me, God."

After each member has taken the oath, the board shall organize by electing one of its members chairman and another member secretary of the board.

(c) On the Monday following the seventh Saturday before each regular municipal primary or election, the municipal board of elections shall meet and appoint precinct registrars and judges of elections. The board may hold other meetings at such times and places as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of business.

(d) The municipal board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office if there be one, otherwise, the minute book shall remain in the custody of the secretary of the board.

(e) The compensation of members of the municipal board of elections shall be fixed by the city council.

(f) Municipal boards of elections shall have, with respect to municipal elections, all of the powers conferred on county boards of elections by G.S. 163-33 and G.S. 163-34 with respect to national, State, district, and county elections. (1971, c. 835, s. 1.)

§ 163-281. Municipal precinct election officials.—(a) Registrars and Judges.—At the meeting required by G.S. 163-280(c), the municipal board of elections shall appoint one person to act as registrar and two other persons to act as judges of election for each precinct in the city. If the city and county precincts are identical and the board so chooses, it may decline to exercise its power to appoint precinct registrars and judges, in which event the persons appointed by the county board of elections as precinct registrars and judges in each precinct within the city shall serve as such for municipal elections under authority and subject to the supervision and control of the municipal board of elections. Nothing herein shall prohibit a municipal board of elections from using the registrars and judges of election appointed by the county board of elections in those precincts which are not identical provided the county board of elections agrees, in writing, to such arrangement. Registrars and judges shall be appointed for terms of two years. Except as modified by this Article, municipal precinct registrars and judges shall meet all of the qualifications, perform all the duties, and have all of the powers imposed and conferred on county precinct registrars and judges by G.S. 163-

41(a), G.S. 163-47, and G.S. 163-48. Municipal precinct registrars and judges shall not have the powers and duties with respect to registration of voters prescribed by G.S. 163-47(b). Immediately after appointing registrars and judges as herein provided, the municipal board of elections shall publish the names of the persons appointed in some newspaper having a general circulation in the city, or in lieu thereof, by posting at the city hall or some other prominent place within the city, and shall notify each person appointed of his appointment.

(b) Assistants at Polls.—Municipal boards of elections shall have the same authority to appoint assistants to aid the registrar and judges as is conferred on county boards of elections by G.S. 163-42.

(c) Ballot Counters.—Municipal boards of elections shall have the same authority to appoint ballot counters as is conferred on county boards of elections by G.S. 163-43.

(d) Markers.—Municipal boards of elections shall not appoint markers, and markers shall not be used in municipal elections.

(e) Watchers.—In cities holding partisan municipal elections, the chairman of each political party in the county shall have the same authority to appoint watchers for municipal elections as he has for county elections under G.S. 163-45.

(f) Compensation.—Precinct officials and assistants appointed under this section shall be paid such sums as the city council may fix. County precinct officials and assistants serving in municipal elections in default of appointment of precinct officials by the municipal board of elections shall be compensated by the city in the sums specified in G.S. 163-46. (1971, c. 835, s. 1.)

Freeholders Not Required.—The registrars are not required to be freeholders. Hendersonville v. Jordan, 150 N.C. 35, 63 S.E. 167 (1908) (decided under former provisions).

§ **163-282. Residency defined for voting in municipal elections.**—The rules for determining residency within a municipality shall be the same as prescribed in G.S. 163-57 for determining county residency. No person shall be entitled to reside in more than one city or town at the same time. (1971, c. 835, s. 1.)

§ **163-283. Right to participate or vote in party primary.**—No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

(1) Is a registered voter, and
(2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and
(3) Is in good faith a member of that party.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary election, shall be entitled to register while the registration books are open during the regular registration period prior to the primary and then to vote in the primary after being registered, provided however, under full-time and permanent registration, such an individual may register not earlier than 60 days nor later than 21 days prior to the primary. (1971, c. 835, s. 1.)

§ **163-284. Mandatory administration by county boards of elections.**—(a) No later than 30 days after January 1, 1973, every municipality which conducts its elections on a partisan basis, and every special district shall deliver its registration books to the county board of elections which shall, forthwith, assume the responsibility for administration of the registration and election process in such municipalities and special districts. The county boards of elections shall have authority to compare the registration books of such municipalities and special districts with the county registration books. Any person found to be registered for municipal or special district elections but not registered on the county registration records shall be required to register with the county board of elections in order to maintain his municipal or special district registration. The county board of elections shall notify any such person by mail to the address appearing on the municipal or special district registration records that he must re-register. The county board of elections shall have authority to require maps or definitive outlines of the boundaries constituting such municipality or special district and shall be immediately advised of any change or relocation of such boundaries.

(b) The registration of voters and the conduct of all elections in municipalities and special districts covered under this section shall be under the authority of the county board of elections. Any contested election or allegations of irregularities shall be made to the county board of elections and appeals from such rulings may be made to the State Board of Elections under existing statutory provisions and rules or regulations adopted by the State Board of Elections.

Each municipality and special district shall reimburse the county board of elections for the actual cost involved in the administration required under (a) and (b) of this section. (1971, c. 835, s. 1.)

§ **163-284.1. Special district elections conducted by county.** — All elections held in and for a sanitary district, fire district or other special district, including school administrative units, shall be conducted by the county board of elections notwithstanding the fact that the taxes of the special district may be levied by a city. (1971, c. 835, s. 1.)

§ **163-285. Administration by county board of elections; optional by municipality.**—Any city, town or incorporated village which conducts its elections on a nonpartisan basis may conduct its own elections, or it may request the county board of elections of the county in which it is located to conduct its elections. A county board of elections shall conduct the elections of each city, town or incorporated village so requesting and the city, town or incorporated village shall pay the cost thereof according to a formula mutually agreed upon by the county board of elections and the city council. If a mutual agreement cannot be reached, then the State Board of Elections shall prescribe the agreement, to which both parties are bound, or, in its discretion, the State Board of Elections shall have authority to instruct the county board of elections to decline the administration of the elections for such city, town or incorporated village.

(1) The elections of cities, towns or incorporated villages which lie in more than one county shall be conducted either (i) by the county in which the greater number of the city's citizens reside, according to the most recent federal census of population, or (ii) jointly by the boards of elections of each county in which such city, town or incorporated village is located, as may be mutually agreed upon by the county boards of elections so affected. The State Board of Elections shall have authority to promulgate regulations for more detailed administration and conduct of municipal elections by county boards of elections for cities situated in more than one county.

(2) Any city, town or incorporated village electing to have its elections conducted by the county board of elections as provided by this section, shall do so no later than January 1, 1973 provided, however, the county board of elections shall be entitled to 90 days notice prior to the effective date decided upon by the municipality. For efficient administration the State Board of Elections shall have the authority to delay the effective date of all such agreements under this section and shall set a date certain on which such agreements shall commence. The State Board of Elections shall also have the authority to permit any city, town or incorporated village to exercise the options under this Article subsequent to the deadline stated in this section.

(3) If any city, town or incorporated village, operating under this section,

shall decide that a full-time registration office is needed in such city, then it shall be the duty of the county board of elections to appoint such registration commissioner who shall be attendant to the duties of registration of voters or other such duties as might be assigned by the county board of elections. Such registration commissioner shall be titled "city registrar" and shall be provided office space and equipment by the city, town or incorporated village requesting such "city registrar." Persons appointed by the county board of elections to such positions shall be paid by the city, town or incorporated village at the rate of not less than twenty dollars ($20.00) per day and such persons shall be appointed by the county board of elections to be in attendance at the prescribed duties not less than one nor more than five days each week. (1971, c. 835, s. 1.)

§ **163-286. Conduct of municipal elections and registration procedure.**—(a) Any city, town, incorporated village or special district which is required by G.S. 163-284 to have its elections conducted by the county board of elections or any city, town or incorporated village which elects to have its elections conducted by the county board of elections, as provided in G.S. 163-285, shall be governed by the same provisions, rules and procedures as are now applicable to county boards of elections or as they may be amended. The county board of elections shall be the legal body responsible for the conduct, supervision and canvassing of such elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections.

(b) Any city, town or incorporated village which elects to conduct its own elections, under the provisions of G.S. 163-285, shall comply with the requirements contained in G.S. 163-280 and G.S. 163-281. (1971, c. 835, s. 1.)

§ **163-287. Special elections; procedure for calling.**—Any city, town or incorporated village, whether its elections are conducted by the county board of elections or by the municipal board of elections, authorized under this Article, shall have the authority to call special elections as might be permitted by law. Prior to calling such election, the city council shall adopt a resolution, specifying the details of such election, and, forthwith, deliver such resolution to the county board of elections or the municipal board of elections as the case may be. The resolution shall call on the appropriate board of elections to conduct the election described in such resolution and state the date on which the special election is to be conducted. Provided, however that no such special election shall be conducted within 45 days of any election scheduled or completed.

Legal notices, as might be required, shall be published no less than 30 days prior to the date on which the registration books are required to be closed. The board of elections, county or municipal, shall be responsible for publishing such legal notices. This paragraph shall not apply to bond elections. (1971, c. 835, s. 1.)

§ **163-288. Registration for city elections; county and municipal boards of elections.**—(a) Where the county board of elections conducts the municipal election, the registration record of the county board of elections shall be the official registration record for voters to vote in all elections, city, district, county, State or national.

(b) Where the municipal board of elections conducts the elections, each such municipality shall purchase loose-leaf binders for the registration records as have been approved by the State Board of Elections. The loose-leaf registration forms, approved and adopted by the State Board of Elections shall be the official registration record in each municipality and the same system now required by counties shall be maintained by each municipality. The loose-leaf registration forms, required by this section, shall be furnished by the State Board of Elections through the respective county boards of elections to the municipalities. Every municipal board of elections conducting the elections in any city, town or incorporated village shall secure and install the binders and loose-leaf registration forms required by this section no later than January 1, 1973.

(c) Registration of voters and preparation of registration books for city elections in cities electing to conduct their own elections shall be conducted under one of the following alternative methods:

(1) METHOD A.—A permanent, full-time registration office shall be established in a convenient place within a city, and the municipal board of elections shall appoint a special registration commissioner to be in charge of the office, and the commissioner shall have full power and authority to register voters who reside within the city without regard to their precinct or county of residence. A municipal board of elections may appoint special registration commissioners notwithstanding the population limitation contained in G.S. 163-67(b).

(2) METHOD B.—The municipal board of elections may contract with the county board of elections to prepare two extra sets of registration forms for each person who registers with the county board of elections and who resides in the municipality which negotiates such agreement. Any such agreement shall be in writing and shall be on such terms as is agreeable to the majority of the county board of elections involved.

(3) METHOD C.—The county board of elections shall permit the municipal board of elections to copy the county registration books from the precinct binder record or from the duplicate required to be maintained by said county board of elections. During the period beginning 21 days before each municipal election (excluding Saturdays and Sundays), the municipal board of elections shall compare the municipal registration books with the appropriate county books and shall add or delete registration certificates in order that the city and county records shall agree. The precincts established for municipal elections may differ from those established by the county board of elections.

(4) METHOD D.—The county board of elections may, in its sole discretion, deliver to the municipal board of elections the county precinct registration books for each precinct wholly or partially located within the city, and these books shall be used in conducting the municipal elections.

(d) The State Board of Elections shall have authority to promulgate rules and regulations for the detailed administration of each alternative method of registration offered by this section.

(e) Each city, town or incorporated village electing to conduct its own elections shall select one of the registration methods offered by this section by joint agreement with the appropriate county boards of elections, subject to the approval of the State Board of Elections. The selection of method shall be evidenced by concurrent resolutions of the city council and each affected county board of elections, which shall be filed with the State Board of Elections, and which shall become effective upon the State Board's approval thereof. Provided, however, if METHOD A is selected, the municipal board of elections shall only be required to send a copy of the resolution to the State Board of Elections and the county board of elections. If the city and the county board of elections fail to agree then METHOD C shall be used. (1971, c. 835, s. 1.)

§ 163-288.1. Registration in newly annexed or incorporated area.—(a) Whenever any new city or special district is incorporated, such city or special district shall cause a map of the corporate limits to be prepared from the boundary descriptions in the act, charter or other document creating the city or district. Such map shall be delivered to the county or municipal board of elections conducting the elections for such city or special district. The board of elections shall then activate for city or district elections each voter eligible to vote in the city or district who is registered to vote in the county, to the extent that residence addresses shown on the county registration certificates can be identified as within the corporate limits of the city or special district. Each voter who is thus registered for municipal or special district elections shall be so notified by mail. The cost of preparing the map of the newly incorporated city or special district, and of holding a special registration therein, shall be borne by the city or special district.

(b) Each voter whose registration is changed by the county or municipal board of elections in any manner pursuant to any annexation or expunction under this subsection shall be so notified by mail.

(c) The State Board of Elections shall have authority to adopt regulations for the more detailed administration of this section. (1971, c. 835, s. 1.)

§ 163-289. Right to challenge; challenge procedure.—(a) The rules governing challenges in municipal elections shall be the same as are now applicable to challenges made in a county election, provided however, any voter who challenges another voter's right to vote in any municipal or special district election must reside in such municipality or special district.

(b) Whenever a challenge is made pursuant to this section, the appropriate board of elections shall process such challenge in accordance with the provisions of Article 8 of Chapter 163 of the General Statutes as such Article is applicable. (1971, c. 835, s. 1.)

§ 163-290. Alternative methods of determining the results of municipal elections.—(a) Each city, town, village, and special district in this State shall operate under one of the following alternative methods of nominating candidates for and determining the results of its elections:

(1) The partisan primary and election method set out in G.S. 163-291.
(2) The nonpartisan primary and election method set out in G.S. 163-294.
(3) The nonpartisan plurality method set out in G.S. 163-292.
(4) The nonpartisan election and runoff election method set out in G.S. 163-293.

(b) Each city whose charter provides for partisan municipal elections as of January 1, 1972, shall operate under the partisan primary and election method until such time as its charter is amended to provide for nonpartisan elections. Each city, town, village, and special district whose elections are by charter or general law nonpartisan may select the nonpartisan primary and election method, the nonpartisan plurality method, or the nonpartisan election and runoff election method by resolution of the municipal governing board adopted and filed with the State Board of Elections not later than 5:00 p.m. Monday, January 31, 1972, except that a city whose charter provides for a nonpartisan primary as of January 1, 1972, may not select the plurality method unless its charter is so amended. If the municipal governing board does not exercise its option to select another choice before that time, the municipality shall operate under the method specified in the following table:

Cities, towns and villages of less than 5,000	Plurality
Cities, towns and villages of 5,000 or more	Election and Runoff Election
Special districts	Plurality

After January 31, 1972, each city, town and village may change its method of election from one to another of the methods set out in subsection (a) by act of the General Assembly or in the manner provided by law for amendment of its charter. (1971, c. 835, s. 1.)

ARTICLE 24.

Conduct of Municipal Elections.

§ 163-291. Partisan primaries and elections.—The nomination of candidates for office in cities, towns, villages, and special districts whose elections are conducted on a partisan basis shall be governed by the provisions of this Chapter applicable to the nomination of county officers, and the terms "county board of elections," "chairman of the county board of elections," "county officers," and similar terms shall be construed with respect to municipal elections to mean the appropriate municipal officers and candidates, except that:

(1) The dates of the primary and election shall be as provided in G.S. 163-279.

(2) A candidate seeking party nomination for municipal or district office may file his notice of candidacy with the board of elections not later than 12:00 noon on the Friday preceding the fourth Saturday and not earlier than 12:00 noon on the Friday preceding the eighth Saturday before the primary election in which he seeks to run.

(3) The filing fee for municipal and district primaries shall be fixed by the municipal or district governing board not later than the Friday before the eighth Saturday before the primary in an amount not less than nor more than twice the following amounts: One hundred dollars ($100.00) in cities or special districts having a population of 75,000 or more; twenty-five dollars ($25.00) in cities or special districts having a population of 25,000 or more but less than 75,000; ten dollars ($10.00) in cities or special districts having a population of less than 25,000 but more than 1,000; five dollars ($5.00) in cities or special districts having a population of 1,000 or less.

(4) The municipal ballot may not be combined with any other ballot.

(5) The canvass of the primary and second primary shall be held on the Thursday following the primary or second primary.

(6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Monday following the canvass of the first primary. (1971, c. 835, s. 1.)

§ 163-292. Determination of election results in cities using the plurality method.—In conducting nonpartisan elections and using the plurality method, elections shall be determined in accordance with the following rules:

(1) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(2) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(3) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot. (1971, c. 835, s. 1.)

§ 163-293. Determination of election results in cities using the election and runoff election method.—(a) Except as otherwise provided in this section, nonpartisan municipal elections in cities using the election and runoff election method shall be determined by a majority of the votes cast. A majority within the meaning of this section shall be determined as follows:

(1) When more than one person is seeking election to a single office, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a ma-

jority, and the candidate who obtains a majority shall be declared elected.

(2) When two persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of offices to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the candidates who obtain a majority shall be declared elected. If more candidates obtain a majority than there are offices to be filled, those having the highest vote (equal to the number of offices to be filled) shall be declared elected.

(b) If no candidate for a single office receives a majority of the votes cast, or if an insufficient number of candidates receives a majority of the votes cast for a group of offices, a runoff election shall be held as herein provided:

(1) If no candidate for a single office receives a majority of the votes cast, the candidate receiving the highest number of votes shall be declared elected unless the candidate receiving the second highest number of votes requests a runoff election in accordance with subsection (c) of this section. In the runoff election only the names of the two candidates who received the highest and next highest number of votes shall be printed on the ballot.

(2) If candidates for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a majority of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared elected unless some one or all of the candidates equal in number to the positions remaining to be filled and having the second highest number of votes shall request a runoff election in accordance with subsection (c) of this section. In the runoff election to elect candidates for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and demanding a runoff election shall be printed on the ballot.

(c) The canvass of the first election shall be held on the Thursday after the election. A candidate entitled to a runoff election may do so by filing a written request for a runoff election with the board of elections no later than 12:00 noon on the Monday after the result of the first election has been officially declared.

(d) Tie votes; how determined:

(1) If there is a tie for the highest number of votes in a first election, the board of elections shall conduct a recount and declare the results. If the recount shows a tie vote, a runoff election between the two shall be held unless one of the candidates, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections. Should that be done, the remaining candidate shall be declared elected.

(2) If one candidate receives the highest number of votes cast in a first election, but short of a majority, and there is a tie between two or more of the other candidates receiving the second highest number of votes, the board of elections shall declare the candidate having the highest number of votes to be elected, unless all but one of the tied candidates give written notice of withdrawal to the board of elections within three days after the result of the first election has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a runoff election in accordance with subsection (c) of this section, a run-

off election shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Runoff elections shall be held on the date fixed in G.S. 163-111(e). Persons whose registrations become valid between the date of the first election and the runoff election shall be entitled to vote in the runoff election, but in all other respects the runoff election shall be held under the laws, rules, and regulations provided for the first election.

(f) A second runoff election shall not be held. The candidates receiving the highest number of votes in a runoff election shall be elected. If in a runoff election there is a tie for the highest number of votes between two candidates, the board of elections shall determine the winner by lot. (1971, c. 835, s. 1.)

§ **163-294. Determination of election results in cities using nonpartisan primaries.**—(a) In cities whose elections are nonpartisan and who use the nonpartisan primary and election method, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the Thursday following the primary.

(c) In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine the winner by lot. (1971, c. 835, s. 1.)

§ **163-294.1. Death of candidates or elected officers.**—(a) This section shall apply only to municipal and special district elections.

(b) If a candidate for political party nomination for office dies, becomes disqualified, or withdraws before the primary but after the ballots have been printed, the provisions of G.S. 163-112 shall govern.

If a candidate for nomination in a nonpartisan municipal primary dies, becomes disqualified, or withdraws before the primary but after the ballots have been printed, the board of elections shall determine whether or not there is time to reprint the ballots. If the board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If he receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

If a nominee for political party nomination dies, becomes disqualified, or withdraws after the primary and before election day, the provisions of G.S. 163-114 shall govern.

If a candidate in a nonpartisan election dies, becomes disqualified, or withdraws before election day and after the ballots have been printed, the board of elections shall determine whether there is enough time to reprint the ballots. If there is not enough time to reprint the ballots, and should the deceased or disqualified candidate receive enough votes to be elected, the board of elections shall declare the office vacant, and shall be filled as provided by law.

(c) If a person elected to any city office dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant, and shall be filled as provided by law.

(d) If a person elected to any municipal or special district office for a term of more than two years dies, becomes disqualified, or resigns after taking the oath of office, the person appointed to fill the vacancy shall serve for the remainder of the unexpired term. (1971, c. 835, s. 1.)

§ 163-294.2. Notice of candidacy and filing fee in nonpartisan municipal elections.—(a) Each person offering himself as a candidate for election to any municipal office in municipalities whose elections are nonpartisan shall do so by filing a notice of candidacy with the board of elections in the following form, inserting the words in parentheses when appropriate:

"Date ....;

I hereby file notice that I am a candidate for election to the office of .... in the regular municipal
(at large) (for the Ward)
election to be held in .... on ....,
(municipality)
19.......

Signed ....
(Name of Candidate)

Witness: ....
For the Board of Elections"

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the board of elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the board of elections. The candidate shall sign the notice of candidacy with his legal name and, in his discretion, any nickname by which he is commonly known, in the form that he wishes it to appear upon the ballot but substantially as follows: "Richard D. (Dick) Roc."

(b) Only persons who are registered to vote in the municipality shall be permitted to file notice of candidacy for election to municipal office. A person who is not registered to vote in municipal elections may file notice of candidacy if at the time he files notice of candidacy he signs and deposits with the board of elections a written pledge that he will register in time to vote in the election. The pledge may be inserted in the notice of candidacy in the following form: "And I certify that I will register for municipal elections in this city (district) in time to participate in the election for which I have filed." The board of elections shall inspect the voter registration lists immediately after the expiration of the registration period and shall cancel the notice of candidacy of any candidate who is not eligible to vote in the election. The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the county sheriff.

(c) Candidates may file their notices of candidacy with the board of elections at any time after 12:00 noon on the Friday preceding the eighth Saturday and before 12:00 noon on the Friday preceding the fourth Saturday before the municipal primary or election. Notices of candidacy which were mailed must be received by the board of elections before the filing deadline regardless of the time they were deposited in the mails.

(d) Any person may withdraw his notice of candidacy at any time prior to the filing deadline prescribed in subsection (c), and shall be entitled to a refund of his filing fee if he does so.

(e) At the time of filing a notice of candidacy, each candidate shall pay to the board of elections a filing fee in the amount fixed by the municipal governing board not later than the Friday before the eighth Saturday before the election in an amount not less than nor more than twice the following amounts:

Municipalities having a population of 75,000 or more	$100.00
Municipalities having a population of 25,000 or more but less than 75,000	$ 25.00
Municipalities having a population of less than 25,000 but more than 1,000	$ 10.00
Municipalities having a population of 1,000 or less	$ 5.00

(1971, c. 835, s. 1.)

§ 163-294.3. Sole candidates to be voted upon in nonpartisan municipal elections.—Each candidate for municipal office in nonpartisan municipal elections shall be voted upon, even though only one candidate has filed or has been nominated for a given office, in order that the voters may have the opportunity to cast write-in votes under the general election laws. (1971, c. 835, s. 1.)

§ 163-294.4. Failure of candidates to file; death of a candidate before election.—(a) If in a nonpartisan municipal election, when the filing period expires, candidates have not filed for all offices to be filled, the board of elections may extend the filing period for five days.

(b) If at the time the filing period closes only two persons have filed notice of candidacy for election to a single office or only as many persons have filed notices of candidacy for group offices as there are offices to be filled, and thereafter one of the candidates dies before the election and before the ballots are printed, the board of elections shall, upon notification of the death, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the board of elections receives notice of the candidate's death, the board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election.

(c) If the ballots have been printed at the time the board of elections receives notice of a candidate's death, and if the board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then, regardless of the number of candidates remaining for the office, the ballots shall not be reprinted and the name of the deceased candidate shall remain on the ballots. If a deceased candidate should poll the highest number of votes in the election, even though short of a majority the board of elections shall declare the office vacant and it shall be filled in the manner provided by law. If no candidate in an election receives a majority of the votes cast and the second highest vote is cast for a deceased candidate, no runoff election shall be held, but the board of elections shall declare the candidate receiving the highest vote to be elected. (1971, c. 835, s. 1.)

§ 163-295. Partisan and nonpartisan municipal elections conducted under general election laws.—Except as otherwise provided in this Article, all municipal elections, whether partisan or nonpartisan, shall be conducted under the law, rules, and procedures set forth in Subchapter VI, comprising Articles 12 through 19 of Chapter 163 of the General Statutes. (1971, c. 835, s. 1.)

§ **163-296. Nomination by petition.**—In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an independent or nonpartisan candidate may do so in the manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later than 21 days before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least fifteen percent (15%) of the whole number of voters qualified to vote in the municipal election according to the most recent figures certified by the State Board of Elections. (1971, c. 835, s. 1.)

§ **163-297. Structure at voting place; marking off limits of voting place.**—Precincts in which municipal primaries and elections are conducted shall conform, in all regards, to the requirements stipulated in G.S. 163-129 and all other provisions contained in Chapter 163 relating to county and State elections. (1971, c. 835, s. 1.)

§ **163-298. Municipal primaries and elections.**—The phrases "county board of elections," and "chairman of the board of elections" as used in this Article, with respect to all municipal primaries and elections, shall mean the municipal board of elections and its chairman in those cities and towns which conduct their own elections, and the county board of elections and its chairman in those cities and towns whose elections are conducted by the county board of elections. The words "general election," as used in this Article, shall include regular municipal elections, runoff elections, and nonpartisan primaries, except where specific provision is made for municipal elections and nonpartisan primaries. (1971, c. 835, s. 1.)

§ **163-299. Ballots; municipal primaries and elections.**—(a) The ballots printed for use in general and special elections under the provisions of this Article shall contain:

(1) The names of all candidates who have been put in nomination in accordance with the provisions of this Chapter by any political party recognized in this State, or, in nonpartisan municipal elections, the names of all candidates who have filed notices of candidacy or who have been nominated in a nonpartisan primary.

(2) The names of all persons who have qualified as independent candidates under the provisions of G.S. 163-296.

(3) All questions, issues and propositions to be voted on by the people.

(b) The form of municipal ballots to be used in partisan municipal elections shall be the same as the form prescribed in this Chapter for the county ballot. A nonpartisan municipal ballot shall be divided into sections according to the offices to be filled. Within each section the names of the candidates for that office shall be printed. At the left of each name shall be printed a voting square, and all voting squares on the ballot shall be arranged in a perpendicular line. On the face of the ballot, above the list of candidates and below the title of the ballot shall be printed in heavy black type the following instructions: "If you tear or deface or wrongly mark this ballot, return it and get another."

(c) The names of candidates for nomination or election in municipal primaries or elections shall be placed on the ballot in strict alphabetical order.

(d) The provisions of G.S. 163-151(1), (2) and (3) shall apply to ballots used in municipal primaries and elections in the same manner as it is applied to county ballots provided, however, the exceptions contained in G.S. 163-151 shall be adhered to if applicable.

(e) The rules contained in G.S. 163-169 for counting primary ballots shall be followed in counting ballots in municipal primaries and nonpartisan primaries.

(f) The requirements contained in G.S. 163-171 shall apply to all municipal elections.

(g) The county or municipal board of elections shall, in addition to the requirements contained in G.S. 163-175 canvass the results in a nonpartisan municipal primary, election or runoff election, and in a special district election, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the municipality or special district for each person for each different office. (1971, c. 835, s. 1.)

§ **163-300. Disposition of duplicate abstracts in municipal elections.**—Within five days after a primary or election is held in any municipality, the chairman of the county or municipal board of elections shall mail to the Chairman of the State Board of Elections, the duplicate abstract prepared in accordance with G.S. 163-176. One copy shall be retained by the county or municipal board of elections as a permanent record and one copy shall be filed with the city clerk. (1971, c. 835, s. 1.)

§ **163-301. Chairman of election board to furnish certificate of elections.**—Not earlier than five days nor later than 10 days after the results of any municipal election have been officially determined and published in accordance with G.S. 163-175 and G.S. 163-179, the chairman of the county or municipal board of elections shall issue certificates of election, under his hand and seal, to all municipal and special district officers. In issuing such certificates of election the chairman shall be restricted by the provisions of G.S. 163-181. (1971, c. 835, s. 1.)

§ **163-302. Absentee ballots not permitted.**—The provisions of Articles 20 and 21 of Chapter 163 of the General Statutes shall not apply to any municipal or special district elections. (1971, c. 835, s. 1.)

§ **163-303. Regulation of campaign expenses not applicable in nonpartisan elections.**—Sections 163-259 through 163-268 shall not apply to nonpartisan municipal or special district elections. (1971, c. 835, s. 1.)

§ **163-304. State Board of Elections to have jurisdiction over municipal elections and to advise.**—The State Board of Elections shall have the same authority over municipal elections as it now has over county and State elections. County boards of elections or municipal boards of elections shall be governed by rules for settling controversies with respect to counting ballots or certification of the returns of the vote in any municipal election as are in effect for settling controversies or removal of election officials in county and State elections. The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, municipal boards of elections, their members and legal officers on the conduct and administration of their elections and registration procedure. In the execution of its responsibilities under this section the State Board of Elections shall appoint an administrator of municipal elections who shall execute the Board's responsibilities and rules, as it may direct, under this Article. Such administrator shall be paid such sum per annum as may be set by the Governor and Advisory Budget Commission, and may be the Board's executive secretary. (1971, c. 835, s. 1.)

Chapter 164.

Concerning the General Statutes of North Carolina.

Article 1.

The General Statutes.

Sec.

164-11.7. Adoption of Replacement Volumes 2B, 2C and 2D and 3B, 3C and 3D of the General Statutes.

164-11.8. Adoption of Replacement Volumes 1C, 1D, 2A and 3A of the General Statutes.

164-11.9. Adoption of 1969 Replacement Volumes 1A and 1B of the General Statutes.

ARTICLE 1.

The General Statutes.

§ 164-11.7. Adoption of Replacement Volumes 2B, 2C and 2D and 3B, 3C and 3D of the General Statutes.—(a) The chapters, subchapters, articles and sections now comprising Volumes 2B and 2C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of §§ 53-1 to 105-462, now in force, as amended, are hereby re-enacted and designated as 1965 Replacement Volumes 2B, 2C and 2D of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising Volumes 3B and 3C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of §§ 117-1 to 167-3, now in force, as amended, are hereby re-enacted and designated as 1964 Replacement Volumes 3B, 3C and 3D of the General Statutes of North Carolina.

(c) This enactment of 1965 Replacement Volumes 2B, 2C and 2D and 1964 Replacement Volumes 3B, 3C and 3D shall not be construed to invalidate or repeal any acts which have been passed during the 1965 Session of the General Assembly, prior to May 14, 1965, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1965, c. 544.)

§ 164-11.8. Adoption of Replacement Volumes 1C, 1D, 2A and 3A of the General Statutes.—(a) The chapters, subchapters, articles and sections now comprising Volume 1C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of §§ 15-1 to 27-59, now in force, as amended, are hereby reenacted and designated as 1965 Replacement Volumes 1C and 1D of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising 1950 Recompiled Volume 2A of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of §§ 28-1 to 52A-20, now in force, as amended, is hereby reenacted and designated as 1966 Replacement Volume 2A of the General Statutes of North Carolina.

(c) The chapters, subchapters, articles and sections now comprising 1960 Replacement Volume 3A of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of §§ 106-1 to 116-211, now in force, as amended is hereby reenacted and designated as 1966 Replacement Volume 3A of the General Statutes of North Carolina.

(d) This enactment of 1965 Replacement Volumes 1C and 1D and 1966 Replacement Volumes 2A and 3A shall not be construed to invalidate or repeal any acts which have been passed during the 1967 Session of the General Assembly, prior to the date of ratification, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to said chapters, subchapters, articles and sections, but not contained in the body hereof. (1967, c. 1266.)

§ 164-11.9. Adoption of 1969 Replacement Volumes 1A and 1B of the General Statutes.—(a) The Chapters and sections thereof now comprising Volume 1A of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of G.S. 1-1 through 1B-8, now in force, as amended, are hereby reenacted and designated as 1969 Replacement Volume 1A of the General Statutes of North Carolina.

(b) The Chapters and sections thereof now comprising Volume 1B of the General Statutes of North Carolina and Cumulative Supplement thereto, consisting of G.S. 2-1 through 14-431, now in force, as amended, are hereby reenacted and designated as 1969 Replacement Volume 1B of the General Statutes of North Carolina.

This reenactment and designation shall not operate as ratification of the judgment of the editors in placing certain sections of this volume in the "1970 Interim Supplement" to Volume 1B. Such sections shall be treated in all respects as if they appear within the bound replacement volume. (1971, c. 135.)

ARTICLE 2.

The General Statutes Commission.

§ 164-12. Creation; name.

Editor's Note.—For article on the North Carolina General Statutes Commission, see 46 N.C.L. Rev. 469 (1968).

State Government Reorganization.—The General Statutes Commission was transferred to the Department of Justice by § 143A-53, enacted by Session Laws 1971, c. 864.

§ 164-13. Duties; use of funds.—(a) It shall be the duty of the Commission:

(1) To advise and cooperate with the Division of Legislative Drafting and Codification of Statutes of the Department of Justice in the work of continuous statute research and correction for which the Division is made responsible by G.S. 114-9(3).

(2) To advise and cooperate with the Division of Legislative Drafting and Codification of Statutes in the preparation and issuance by the Division of supplements to the General Statutes pursuant to G.S. 114-9(2).

(3) To make a continuing study of all matters involved in the preparation and publication of modern codes of law.

(4) To recommend to the General Assembly the enactment of such substantive changes in the law as the Commission may deem advisable.

(1969, c. 541, s. 3; 1971, c. 1093, s. 7.)

Editor's Note.—

The 1969 amendment substituted "§ 114-9(2)" for "§ 114-9 (b)" at the end of subdivision (2) of subsection (a).

The 1971 amendment substituted "G.S. 114-9(3)" for "§ 114-9 (c)" in subsection (a)(1).

As the rest of the section was not changed by the amendments, only subsection (a) is set out.

§ 164-14. Membership; appointments; terms; vacancies. — (a) The Commission shall consist of 10 members, who shall be appointed as follows:

(1) One member, by the president of the North Carolina State Bar;

(2) One member, by the General Statutes Commission;

(3) One member, by the dean of the school of law of the University of North Carolina;

(4) One member, by the dean of the school of law of Duke University;

(5) One member, by the dean of the school of law of Wake Forest University;

(6) One member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House;

(7) One member, by the President of the Senate of each General Assembly from the membership of the Senate;

(8) Two members, by the Governor;

(9) One member, by the dean of the school of law of North Carolina Central University.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the General Statutes Commission, and the deans of the schools of law of North Carolina Central University, Duke University, the University of North Carolina, and Wake Forest University shall be made in the even-numbered years, and appointments made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be made in the odd-numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May thirty-first two years thereafter. All such appointments shall be made not later than May thirty-first of the year when such appointments are to become effective.

(d) If any appointment provided for by this section is not made prior to June first of the year when it should become effective, a vacancy shall exist with respect thereto, and the vacancy shall then be filled by appointment by the Governor. If any member of the Commission dies or resigns during the term for which he was appointed, his successor for the unexpired term shall be appointed by the person who made the original appointment, as provided in G.S. 164-14, or by the successor of such person; and if such vacancy is not filled within 30 days after the vacancy occurs, it shall then be filled by appointment by the Governor. In any case where an appointment authorized to be made by G.S. 164-14(c) has not been made on or before July 31 of the year in which it was due to be made, a vacancy shall exist with respect to that appointment and the General Statutes Commission at its next meeting shall by majority vote fill the vacancy by appointment.

(f) Notwithstanding the expiration of the term of the appointment, the terms of members of the General Statutes Commission shall continue until the appointment of a successor has been made and reported to the secretary of the Commission. (1945, cc. 157, 635; 1947, c. 114, s. 3; 1967, cc. 17, 1230; 1969, c. 541, s. 4; 1971, c. 1, ss. 1, 2; c. 76.)

Editor's Note.—

The first 1967 amendment added subsection (f).

The second 1967 amendment substituted "by the General Statutes Commission" for "by the president of the North Carolina Bar Association" in subdivision (2) of subsection (a) and substituted "the General Statutes Commission" for "the president of the North Carolina Bar Association" near the beginning of subsection (c).

The 1969 amendment substituted "Wake Forest University" for "Wake Forest College" in subdivision (5) of subsection (a) and in subsection (c).

The first 1971 amendment increased the number of members of the Commission from nine to 10, added subdivision (9) of subsection (a), and inserted "North Carolina Central University" near the beginning of subsection (c).

The second 1971 amendment, effective Oct. 1, 1971, added the last sentence in subsection (d).

Session Laws 1971, c. 1, s. 3, provides: "The initial appointment by the dean of the school of law of North Carolina Central University shall be made upon this act becoming effective [Feb. 5, 1971] for a term to expire on May 31, 1972. Succeeding appointments shall be made in the even-numbered years in accord with the provisions of G.S. 164-14(c)."

As the other subsections were not affected by the amendments, they are not set out.

§ **164-19. Compensation.**—Members of the Commission shall be paid the amount of per diem provided by G.S. 138-5 for attendance upon meetings of the Commission, or upon attendance of meetings of committees of the Commission, together with such subsistence and travel allowance as may be provided by law. (1945, c. 157; 1969, c. 445, s. 3.)

Editor's Note. — The 1969 amendment substituted "the amount of per diem provided by G.S. 138-5" for "ten dollars a day."

Chapter 165.

Veterans.

Article 1.

North Carolina Department of Veterans Affairs.

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Miscellaneous Provisions.

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ARTICLE 1.

North Carolina Department of Veterans Affairs.

§ **165-1. North Carolina Veterans Commission renamed.**—The North Carolina Veterans Commission is hereby renamed the North Carolina Department of Veterans Affairs. The Department shall assume all duties, responsibilities and powers formerly exercised by the Veterans Commission, and shall further exercise those powers and duties prescribed in this article and elsewhere in the General Statutes. (1967, c. 1060, s. 1.)

Revision of Article.—Session Laws 1967 c. 1060, s. 1, effective July 1, 1967, rewrote the former article, which also consisted of eleven sections and derived from Session Laws 1945, c. 723, s. 1; c. 1087; 1949, c. 430, ss. 1, 2; c. 1292; 1951, c. 1048, ss. 1, 2; 1957, c. 541, s. 19. The 1967 act so changed the provisions of the former article that no detailed explanation of the changes has been attempted, but where present sections are similar to prior provisions, the historical citations have been added.

State Government Reorganization.—The Department and Board of Veterans Affairs were transferred to the Department of Military and Veterans' Affairs by § 143A-236, enacted by Session Laws 1971, c. 864.

§ **165-2. References changed.** — Wherever in the General Statutes the words "North Carolina Veterans Commission" appear, the same shall be stricken out and the words "North Carolina Department of Veterans Affairs" inserted in lieu thereof. (1967, c. 1060, s. 1.)

§ **165-3. Definitions.**—Wherever used in this article, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

(1) "Board" means the State Board of Veterans Affairs.
(2) "Department" means the North Carolina Department of Veterans Affairs, an agency of the government of the State of North Carolina.
(3) "Director" means the State Director of Veterans Affairs.
(4) "Veteran" means
    a. For qualifying as a voting member of the State Board of Veterans Affairs and as the State Director of Veterans Affairs, a person

who served honorably during a period of war as defined in Title 38, United States Code.

b. For entitlement to the services of the Department of Veterans Affairs, any person who may be entitled to any benefits or rights under the laws of the United States by reason of service in the armed forces of the United States.

(5) "Veterans organization" means any organization of veterans which has been chartered by an act of the United States Congress and is legally constituted and operating in this State pursuant to said charter. (1945, c. 723, s. 1; 1949, c. 430, s. 1; 1967, c. 1060, s. 1.)

§ **165-4. Purpose.**—The purpose of this article is to provide assistance to veterans, their families and their dependents, in obtaining or maintaining privileges, rights and benefits to which they are entitled under federal, State or local laws. (1945, c. 723, s. 1; 1967, c. 1060, s. 1.)

§ **165-5. State Board of Veterans Affairs.**—(a) The Department shall be governed by a State Board of Veterans Affairs.

(b) Membership on the Board shall consist of five voting members and representatives of major veterans organizations, as hereinafter provided:

(1) There shall be five voting members who shall be veterans, and each shall be appointed by the Governor for a five-year term. These terms shall commence in successive years beginning May 17 of each year as previously provided for the Veterans Commission. Initially, the five voting members shall be the same five persons who are serving as voting members of the Veterans Commission at the time of ratification of this article, and appointments to the Board of Veterans Affairs shall be made as the Veterans Commission terms expire.

(2) Both major political parties in the State shall be represented on the voting membership of the Board.

(3) Each voting member shall continue to serve after the expiration of his term until his successor is appointed and qualifies.

(4) Any vacancy occurring prior to the expiration of a voting member's term shall be filled by appointment by the Governor for the unexpired term.

(5) Failure of a voting member to attend any meetings of the Board within a one-year period shall constitute grounds for disqualification of said member and the Governor may, in his discretion, declare the position vacant and appoint a new member to serve out the unexpired term of the disqualified member.

(6) The department commander or official head of each veterans organization shall be, ex officio, a member of the Board, but shall have no vote on matters coming before the Board.

(c) The Board shall select one of its voting members to serve as chairman.

(d) The Board shall meet four times every calendar year and may be convoked at such other times as the Governor or chairman may deem necessary.

(e) All members of the Board shall receive a per diem allowance while attending meetings of the Board and shall be allowed travel and subsistence expenses incurred in the discharge of official business. The per diem, travel and subsistence expenses shall be at such rate and in such amount as prescribed by the Director of the Budget pursuant to applicable provisions of law. (1945, c. 723, s. 1; c. 1087; 1949, c. 430, s. 2; 1951, c. 1048, ss. 1, 2; 1967, c. 1060, s. 1.)

Cross Reference.—See note to § 165-1.

§ **165-6. Powers and duties of the Department.**—In furtherance of the stated purpose of this article, the Department is hereby authorized and empowered to do the following:

(1) To assist veterans, their families, and dependents in the presentation,

processing, proof, and establishment of such claims, privileges, rights, and benefits as they may be entitled to under federal, State, or local laws, rules, and regulations.

(2) To aid persons in active military service and their dependents with problems arising out of said service which come reasonably within the purview of the Department's program of assistance.

(3) To collect data and information as to the facilities and services available to veterans, their families, and dependents and to cooperate with agencies furnishing information or services throughout the State in order to inform such agencies regarding the availability of (i) education, training and retraining facilities, (ii) health, medical, rehabilitation, and housing services and facilities, (iii) employment and reemployment services, (iv) provisions of federal, State, and local laws, rules, and regulations affording rights, privileges, and benefits to veterans, their families, and dependents, and in respect to such other matters of similar, related, or appropriate nature not herein set out.

(4) To establish such field offices, facilities and services throughout the State as may be necessary to carry out the purposes of this article.

(5) To cooperate, as the Department deems appropriate, with governmental, private and civic agencies and instrumentalities in securing services or benefits for veterans, their families, dependents and beneficiaries.

(6) To accept any property, funds, service, or facilities from any source, public or private, granted in aid or furtherance of the administration of the provisions of this article.

(7) To enter into any contract or agreement with any person, firm, or corporation, or governmental agency or instrumentality in furtherance of the purposes of this article, and to make all rules and regulations necessary for the proper and effective administration of its duties.

(8) It shall be the duty of the Department to train, supervise and assist the employees of any county, city or town who are engaged in veterans service. Authority is hereby granted the governing body of any county, city or town to appropriate such amounts as it may deem necessary to provide a veterans service program and the expenditure of such funds is hereby declared to be for a public purpose; such program shall be operated in affiliation with this Department and under its supervision as set forth above.

(9) The Department may, in its discretion, contribute to each county an amount not to exceed one thousand dollars ($1,000.00) on a matching basis for any fiscal year for the maintenance and operation of a county veterans service program. Participating counties shall furnish the Department such reports, accountings and other information at such times and in such form as the Department may require.

(10) The Department shall biennially prepare and submit to the Governor and the General Assembly a report of its activities during the preceding two years. (1945, c. 723, s. 1; 1949, c. 1292; 1967, c. 1060, s. 1.)

Local Modification. — By virtue of Session Laws 1969, c. 480, s. 1, Mitchell should be stricken from the replacement volume.

§ **165-7. Director and employees.**—(a) The full-time management of the Department shall be under the direction of a State Director of Veterans Affairs. The Board shall elect, with the approval of the Governor, the Director who shall be a veteran of competency and ability. He shall serve for such time as his services are satisfactory to the Board and his salary shall be fixed by the Governor, subject to the approval of the Advisory Budget Commission.

(b) The Director may, with the approval of the Board, employ an Assistant State Director of Veterans Affairs and such other personnel as may be necessary effectively to administer the provisions of this article. In employing such persons, preference shall be given to veterans as defined in § 165-3 (4) a of this article. (1945, c. 723, s. 1; 1957, c. 541, s. 19; 1967, c. 1060, s. 1.)

§ 165-8. Quarters.—The Department of Administration shall provide, in the city of Raleigh, adequate quarters for the central office of the Department of Veterans Affairs. The Department of Veterans Affairs shall procure suitable space for its field offices and other activities pursuant to applicable provisions of law and in accordance with rules adopted by the Governor with the approval of the Council of State. (1945, c. 723, s. 1; 1967, c. 1060, s. 1.)

§ 165-9. Appropriation.—Appropriations for the Department shall be made from the general fund of the State, and the Governor, with the approval of the Council of State, is hereby authorized and empowered to allocate from time to time from the Contingency and Emergency Fund, such funds as may be necessary to carry out the intent and purposes of this article. (1945, c. 723, s. 1; 1967, c. 1060, s. 1.)

§ 165-10. Transfer of veterans activities.—The Governor may transfer to the Department such funds, facilities, properties and activities now being held or administered by the State for the benefit of veterans, their families and dependents, as he may deem proper; provided, that the provisions of this section shall not apply to the activities of the North Carolina Employment Security Commission in respect to veterans. (1945, c. 723, s. 1; 1967, c. 1060, s. 1.)

§ 165-11. Copies of records to be furnished to the North Carolina Department of Veterans Affairs.—(a) Whenever copies of any State and local public records are requested by a representative of the North Carolina Department of Veterans Affairs in assisting persons in obtaining any federal, State, local or privately provided benefits relating to veterans and their beneficiaries, the official charged with the custody of any such records shall without charge furnish said representative with the requested number of certified copies of such records; provided, that this section shall not apply to the disclosure of information in certain privileged and confidential records referred to elsewhere in the General Statutes of North Carolina, which information shall continue to be disclosed in the manner prescribed by the statute relating thereto.

(b) No official chargeable with the collection of any fee or charge under the laws of the State of North Carolina in connection with his official duties shall be held accountable on his official bond or otherwise for any fee or charge remitted pursuant to the provisions of this section. (1967, c. 1060, s. 1.)

ARTICLE 2.

Minor Veterans.

§ 165-12. Short title.

Quoted in Gastonia Personnel Corp. v. Rogers, 276 N.C. 279, 172 S.E.2d 19 (1970).

§ 165-13. Definition.—As used in this article, "veteran" means any person who may be entitled to any benefits or rights under the laws of the United States, by reason of service in the armed forces of the United States. (1945, c. 770; 1967, c. 1060, s. 2.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ 165-14. Application of article.—This article applies to every person, either male or female, eighteen years of age or over, but under twenty-one years of age, who is, or who may become, entitled to any rights or benefits under the laws of the United States relating to veterans benefits. (1945, c. 770; 1967, c. 1060, s. 3.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, substituted "laws of the United States relating to veterans benefits" for "Servicemen's Readjustment Act."

§ 165-15. Purpose of article.—The purpose of this article is to remove the disqualification of age which would otherwise prevent persons to whom this article applies from taking advantage of any right or benefit to which they may be or may become entitled under the laws of the United States relating to veterans benefits, and to assure those dealing with such minor persons that the acts of such minors shall not be invalid or voidable by reason of the age of such minors, but shall in all respects be as fully binding as if said minors had attained their majority; and this article shall be liberally construed to accomplish that purpose. (1945, c. 770; 1967, c. 1060, s. 4.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, substituted "laws of the United States relating to veterans benefits" for "Servicemen's Readjustment Act."

§ 165-16. Rights conferred; limitation.—(a) Every person to whom this article applies is hereby authorized and empowered, in his or her own name without order of court or the intervention of any guardian or trustee:

(1) To purchase or lease any property, either real or personal, or both, which such person may deem it desirable to purchase or lease in order to avail himself or herself of any of the benefits of the laws of the United States relating to veterans benefits, and take title to such property in his or her own name or in the name of himself or herself and spouse.

(2) To execute any note or similar instrument for any part or all of the purchase price of any property purchased pursuant to subdivision (1) of this section and to secure the payment thereof by retained title contract, mortgage, deed of trust or other similar or appropriate instrument.

(3) To execute any other contract or instrument which such person may deem necessary in order to enable such person to secure the benefits of the laws of the United States relating to veterans benefits.

(4) To execute any contract or instrument which such person may deem necessary or proper in order to enable such person to make full use of any property purchased pursuant to the provisions of the laws of the United States relating to veterans benefits, including the right to dispose of such property; such contracts to include but not to be limited to the following:

a. With respect to a home: Contracts for insurance, repairs, and services such as gas, water, and lights, and contracts for furniture and other equipment.

b. With respect to a farm: Contracts such as are included in paragraph (a) of this subdivision (4) above, together with contracts for livestock, seeds, fertilizer and farm equipment and machinery, and contracts for farm labor and other farm services.

c. With respect to a business: Contracts such as are included in paragraph (a) of this subdivision (4), together with such other contracts as such person may deem necessary or proper for the maintenance and operation of such business.

(b) Every person to whom this article applies may execute such contracts as are hereby authorized in his own name without any order from any court, and without the intervention of a guardian or trustee, and no note, mortgage, conveyance, deed of trust, contract, or other instrument, conveyance or action within the purview of this article shall be invalid, voidable or defective by reason of the fact that the person executing or performing the same was at the time a minor.

(c) In respect to any action at law or special proceeding in relation to any transaction within the purview of this article, every minor person to whom this article applies shall appear and plead in his or her own name and right without the intervention of any guardian or trustee, and every such minor person shall be considered a legal party to any such action at law or special proceeding in all respects as if such person had attained the age of twenty-one years. No such minor shall hereafter interpose the defense of lack of legal capacity by reason of age in connection with any transaction within the purview of this article, nor disavow any such transaction upon coming of age.

(d) All such authority and power as are conferred by this article are subject to all applicable provisions of the laws of the United States relating to veterans benefits. (1945, c. 770; 1967, c. 1060, s. 5.)

Editor's Note.— The 1967 amendment, effective July 1, 1967, substituted "laws of the United States relating to veterans benefits" for "Servicemen's Readjustment Act" throughout this section.

Article 3.

Minor Spouses of Veterans.

§ **165-17. Definition.**—As used in this article, "veteran" means any person who may be entitled to any benefits or rights under the laws of the United States, by reason of service in the armed forces of the United States. (1945, c. 771; 1967, c. 1060, s. 6.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ **165-18. Rights conferred.**—(a) Any person under the age of 18 years who is the husband or wife of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to execute any and all contracts, conveyances, and instruments, to take title to property, to defend any action at law, and to do all other acts necessary to make fully available to such veteran, his or her family or dependents, all rights and benefits under the laws of the United States relating to veterans benefits, in as full and ample manner as if such minor husband or wife of such veteran had attained the age of 18 years.

(b) Any person under the age of 18 years, who is the husband or wife of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to join in the execution of any contract, deed, conveyance or other instrument which may be deemed necessary to enable his or her veteran spouse to make full use of any property purchased pursuant to the provisions of the foregoing section, including the right to dispose of such property.

(c) With respect to any action at law or special proceeding in relation to any transaction within the purview of this Article, every minor person to whom this Article applies shall appear and plead in his or her own name and right without the intervention of any guardian or trustee; and every such minor person shall be considered a legal party to any such action at law or special proceeding in all respects as if such person had attained the age of 18 years. No such minor shall hereafter interpose the defense of lack of legal capacity by reason of age in connection with any transaction within the purview of this Article, nor disavow any such transaction upon coming of age. (1945, c. 771; 1947, c. 905, ss. 1, 2; 1967, c. 1060, s. 7; 1971, c. 1231, s. 1.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, substituted "laws of the United States relating to veterans benefits" for "Servicemen's Readjustment Act of one thousand nine hundred and forty-four, or other statutes enacted in the interest of veterans, their families or dependents, and all laws, rules and regulations amendatory or supplemental thereto" in subsection (a).

The 1971 amendment substituted "18" for "twenty-one" twice in subsection (a), substituted "18" for "21" in subsection (b), and substituted "18" for "twenty-one" in the first sentence of subsection (c).

Authority to suspend accrued statutory rights may not be reasonably implied from the general terms of this section. Harrill v. Teachers' & State Employees' Retirement Sys., 271 N.C. 357, 156 S.E.2d 702 (1967).

ARTICLE 4.

Scholarships for Children of War Veterans.

§ **165-19. Purpose.**—In appreciation for the service and sacrifices of North Carolina's war veterans and as evidence of this State's concern for their children, there is hereby continued a revised program of scholarships for said children as set forth in this article. (1967, c. 1060, s. 8.)

Revision of Article.—Session Laws 1967, c. 1060, s. 8, effective July 1, 1967, rewrote the former article, which related to copies of records concerning veterans. The former article consisted of four sections and derived from Session Laws 1945, c. 1064.

§ **165-20. Definitions.**—As used in this Article the terms defined in this section shall have the following meaning:

(1) "Active federal service" means full-time duty in the armed forces other than active duty for training; however, if disability or death occurs while on active duty for training (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, such active duty for training shall be considered as active federal service.

(2) "Armed forces" means the army, navy, marine corps, air force and coast guard, including their reserve components.

(3) "Child" means a person who has completed high school or its equivalent prior to receipt of a scholarship as may be awarded under this Article and who further meets one of the following requirements:

  a. A person whose veteran parent was a legal resident of North Carolina at the time of said veteran's entrance into the armed forces.

  b. A veteran's child who was born in North Carolina and has lived in North Carolina continuously since birth. Provided, that the requirement in the preceding sentence as to birth in North Carolina may be waived by the North Carolina Department of Veteran's Affairs if it is shown to the satisfaction of the Department that the child's mother was a native-born resident of North Carolina and was such resident at the time of her marriage to the veteran and was outside the State temporarily at the time of the child's birth, following which the child was returned to North Carolina within a reasonable period of time where said child has since lived continuously.

  c. A person meeting either of the requirements set forth in subdivision (3) a or b above, and who was legally adopted by the veteran prior to said person's reaching the age of six years.

(4) "Period of war" and "wartime" shall mean any of the periods or circumstances as defined below:

  a. World War I, meaning (i) the period beginning on April 6, 1917 and ending on November 11, 1918, and (ii) in the case of a veteran who served with the United States armed forces in Russia, the period beginning on April 6, 1917 and ending on April 1, 1920.

  b. World War II, meaning the period beginning on December 7, 1941 and ending on December 31, 1946.

c. Korean Conflict, meaning the period beginning on June 27, 1950 and ending on January 31, 1955.
d. Vietnam era, meaning the period beginning on August 5, 1964, and ending on such date as shall be prescribed by Presidential proclamation or concurrent resolution of the Congress.
e. Any period of service in the armed forces during which the veteran parent of an applicant for a scholarship under this Article suffered death or disability (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war.

(5) "Private educational institution" means any junior college, senior college or university which is operated and governed by private interests not under the control of the federal, State or any local government, which is located within the State of North Carolina, which does not operate for profit, whose curriculum is primarily directed toward the awarding of associate, baccalaureate or graduate degrees, which agrees to the applicable administration and funding provisions of G.S. 165-22.1 of this Article, and which is otherwise approved by the State Board of Veterans Affairs.

(6) "State educational institution" means any educational institution of higher learning which is owned and operated by the State of North Carolina, or any community college operated under the provisions of Chapter 115A and Article 3 of Chapter 116 of the General Statutes of North Carolina, or the college program of the North Carolina School of the Arts.

(7) "Veteran" means a person who served as a member of the armed forces of the United States in active federal service during a period of war and who was separated from the armed forces under conditions other than dishonorable. A person who was separated from the armed forces under conditions other than dishonorable and whose death or disability was incurred (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, shall also be deemed a "veteran" and such death or disability shall be considered wartime service-connected. (1967, c. 1060, s. 8; 1969, c. 720, s. 3; c. 741, ss. 1, 2; 1971, c. 339.)

Editor's Note.—The first 1969 amendment, effective July 1, 1969, added present paragraph d of subdivision (4) and redesignated former paragraph d of that subdivision as e.

The second 1969 amendment, effective July 1, 1969, added present subdivision (5), inserted "chapter 115A and" and "the college program of" in present subdivision (6) and redesignated former subdivisions (5) and (6) as present subdivisions (6) and (7).

The 1971 amendment deleted, at the end of subdivision (3) c, "and within ten years of the veteran's entry on active duty for the period of war under which said person's entitlement to a scholarship is being considered."

§ **165-21. Scholarship.** — A scholarship granted pursuant to this article shall consist of the following benefits in either a State or private educational institution:

(1) With respect to State educational institutions, unless expressly limited elsewhere in this article, a scholarship shall consist of:
a. Tuition,
b. A reasonable board allowance,
c. A reasonable room allowance,
d. Such other items and institutional service as are embraced within the so-called institutional matriculation fees and other special fees and charges required to be paid as a condition to remaining in said institution and pursuing the course of study selected.

(2) With respect to private educational institutions, a scholarship shall consist of a monetary allowance as prescribed in § 165-22.1 (d).

(3) Only one scholarship may be granted pursuant to this article with respect to each child and it shall not extend for a longer period than four academic years, which years, however, need not be consecutive. (1967, c. 1060, s. 8; 1969, c. 741, s. 3.)

Editor's Note. — Session Laws 1967, c. 1060, s. 9, effective July 1, 1967, provides: "Those persons who have been granted a scholarship under the proviso of G.S. 116-150, as the same appears in 1966 Replacement Volume 3A of the General Statutes, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in Class I-B, as that class is defined in G.S. 165-22 (a)(2) [subdivision (2) of G.S. 165-22]. All other persons who have been granted a scholarship under G.S. 116-150, as the same appears in the 1966 Replacement Volume 3A of the General Statutes, excluding those covered by the proviso referred to in the preceding sentence, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in G.S. 165-21."

The 1969 amendment, effective July 1, 1969, rewrote this section.

§ 165-22. Classes or categories of eligibility under which scholarships may be awarded. — A child, as defined in this article, who falls within the provisions of any eligibility class described below shall, upon proper application be considered for a scholarship, subject to the provisions and limitations set forth for the class under which he is considered:

(1) Class I-A: Under this class a scholarship shall be awarded to any child whose veteran parent

a. Was killed in action or died from wounds or other causes not due to his own wilful misconduct while a member of the armed forces during a period of war, or

b. Has died of service-connected injuries, wounds, illness or other causes incurred or aggravated during wartime service in the armed forces, as rated by the United States Veterans Administration.

(2) Class I-B. Under this class a limited scholarship providing only those benefits set forth in § 165-21 (a) (1) and (4), and § 165-21 (b) of this article, shall be awarded to any child whose veteran parent, at the time the benefits pursuant to this article are sought to be availed of, is or was at the time of his death receiving compensation for a wartime service-connected disability of one hundred percent (100%) as rated by the United States Veterans Administration. Provided, that if the veteran parent of a recipient under this class should die of his wartime service-connected condition before the recipient shall have utilized all of his scholarship eligibility time, then the North Carolina Department of Veterans Affairs shall amend the recipient's award from Class I-B to Class I-A for the remainder of the recipient's eligibility time. The effective date of such an amended award shall be determined by the North Carolina Department of Veterans Affairs, but, in no event, shall it predate the date of the veteran parent's death.

(3) Class II: Under this class a scholarship may be awarded to not more than one hundred children yearly, each of whose veteran parent, at the time the benefits pursuant to this article are sought to be availed of,

a. Is or was at the time of his death receiving compensation for a wartime service-connected disability of thirty percent (30%) or more, but less than one hundred percent (100%), as rated by the United States Veterans Administration, or

b. Is or was at the time of his death receiving wartime compensation for a statutory award for arrested pulmonary tuberculosis, as rated by the United States Veterans Administration, or

c. Was a prisoner of war for a period of at least six months and who was wounded in combat against an enemy of the United States of America during the time of war and is or was at the time of his death receiving compensation for a wartime service-connected disability of twenty percent (20%) or more, as rated by the United States Veterans Administration.

(4) Class III: Under this class a scholarship may be awarded to not more than one hundred children yearly, each of whose veteran parent, at the time the benefits pursuant to this article are sought to be availed of, is or was at the time of his death drawing pension for permanent and total disability, nonservice-connected, as rated by the United States Veterans Administration. (1967, c. 1060, s. 8.)

Editor's Note. — Session Laws 1967, c. 1060, s. 9, effective July 1, 1967, provides: "Those persons who have been granted a scholarship under the proviso of G.S. 116-150, as the same appears in 1966 Replacement Volume 3A of the General Statutes, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in Class I-B, as that class is defined in G.S. 165-22 (a)(2) [subdivision (2) of this section]. All other persons who have been granted a scholarship under G.S. 116-150, as the same appears in the 1966 Replacement Volume 3A of the General Statutes, excluding those covered by the proviso referred to in the preceding sentence, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in G.S. 165-21."

Section 165-21, referred to in subdivision (2) of this section, was written by Session Laws 1969, c. 741, s. 3. For provisions of the rewritten section similar to those referred to see § 165-21(1)a and (3).

§ 165-22.1. Administration and funding.—(a) The administration of the scholarship program shall be vested in the North Carolina Department of Veterans Affairs, and the disbursing and accounting activities required shall be a responsibility of the Department of Administration. The Department of Veterans Affairs shall determine the eligibility of applicants, select the scholarship recipients, establish the effective date of scholarships, and may suspend or revoke scholarships if the said Department of Veterans Affairs finds that the recipient does not maintain an adequate academic status, or if the recipient engages in riots, unlawful demonstrations, the seizure of educational buildings, or otherwise engages in disorderly conduct, breaches of the peace or unlawful assemblies. The Department of Veterans Affairs shall maintain the primary and necessary records, and promulgate such rules and regulations not inconsistent with the other provisions of this article as it deems necessary for the orderly administration of the program. It may require of State or private educational institutions, as defined in this article, such reports and other information as it may need to carry out the provisions of this article. The Department of Administration shall disburse scholarship payments for recipients certified eligible by the Department of Veterans Affairs upon certification of enrollment by the enrolling institution.

(b) Funds for the support of this program shall be appropriated to the Department of Administration as a reserve for payment of the allocable costs for room, board, tuition, and other charges, and shall be placed in a separate budget code from which disbursements shall be made. In the event the said appropriation for any year is insufficient to pay the full amounts allocable under the provisions of this article, such supplemental sums as may be necessary shall be allocated from the Contingency and Emergency Fund. The method of disbursing and accounting for funds allocated for payments under the provisions of this section shall be in accordance with those standards and procedures prescribed by the Director of the Budget, pursuant to the Executive Budget Act.

(c) Allowances for room and board in State educational institutions shall be at such rate as the Director of the Budget may determine to be reasonable.

(d) Scholarship recipients electing to attend a private educational institution shall be granted a monetary allowance for each term or other academic period attended under their respective scholarship awards. All recipients under Class I-B scholarship shall receive an allowance at one rate, irrespective of course or institution; all recipients under Classes I-A, II and III shall receive an uniform allowance at a rate higher than for Class I-B, irrespective of course or institution. The amount of said allowances shall be determined by the Director of the Budget and made known prior to the beginning of each fall quarter or semester; provided that the Director of the Budget may change the allowances at intermediate periods when in his judgment such changes are necessary. Disbursements by the State shall be to the private institution concerned, for credit to the account of each recipient attending said institution. The manner of payment to any private institution shall be as prescribed by the Department of Administration. The participation by any private institution in the program shall be subject to the applicable provisions of this article and to examination by State auditors of the accounts of scholarship recipients attending or having attended private institutions. The Department of Veterans Affairs may defer making an award or may suspend an award in any private institution which does not comply with the provisions of this article relating to said institutions.

(e) Irrespective of other provisions of this Article, the Department of Veterans Affairs may prescribe special procedures for adjusting the accounts of scholarship recipients who for reasons of illness, physical inability to attend class or for other valid reason satisfactory to the Director of the Department of Veterans Affairs may withdraw from State or private educational institutions prior to the completion of the term, semester, quarter or other academic period being attended at the time of withdrawal. Such procedures may include, but shall not be limited to, paying the recipient the dollar value of his unused entitlements for the academic period being attended, with a corresponding deduction of this period from his remaining scholarship eligibility time. (1967, c. 1060, s. 8; 1969, c. 720, ss. 4, 5; c. 741, s. 4; 1971, c. 458.)

Editor's Note.—The first 1969 amendment, effective July 1, 1969, rewrote the former first paragraph of the section and designated it as subsection (a). The second 1969 amendment, effective July 1, 1969, rewrote the section.

The 1971 amendment added subsection (e).

ARTICLE 5.

Veterans' Recreation Authorities.

§ 165-28. Duty of the authority and commissioners of the authority.—The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed.

The commissioners may, in the exercise of their discretion, limit the use of recreational centers under their control in whole or in part to veterans of one sex. They shall have the authority to make rules and regulations regarding the use of the recreational centers and other matters and things coming within their jurisdiction.

They shall have the authority to appoint one or more advisory committees consisting of representatives of various veterans' organizations and others and may delegate to such committee or committees authority to execute the policies and programs of activity adopted by the commissioners. (1945, c. 460, s. 6; 1965, c. 367.)

Editor's Note. – The 1965 amendment deleted "shall provide separate recreational centers for persons of the colored and white races, and they" following "The commissioners" in the second paragraph.

§ 165-36. Conveyance, lease or transfer of property by a city or county to an authority.

Local Modification.—Mecklenburg and city of Charlotte. 1965, c. 715, s. 1.

ARTICLE 7.

Miscellaneous Provisions.

§ 165-44. Korean and Vietnam veterans; benefits and privileges.—(a) All benefits and privileges now granted by the laws of this State to veterans of World War I and World War II and their dependents and next of kin are hereby extended and granted to veterans of the Korean Conflict and their dependents and next of kin.

For the purposes of this section, the term "veterans of the Korean Conflict" means those persons serving in the armed forces of the United States during the period beginning on June 27, 1950, and ending on January 31, 1955.

(b) All benefits and privileges now granted by the laws of this State to veterans of World War I, World War II, the Korean Conflict, and their dependents and next of kin are hereby extended and granted to veterans of the Vietnam era and their dependents and next of kin.

For purposes of this section, the term "veterans of the Vietnam era" means those persons serving in the armed forces of the United States during the period beginning August 5, 1964, and ending on such date as shall be prescribed by Presidential proclamation or concurrent resolution of the Congress. (1953, c. 215; 1969, c. 720, ss. 1, 2.)

Editor's Note.—The 1969 amendment, effective July 1, 1969, designated the former provisions of this section as subsection (a), substituted, at the end of the second paragraph of subsection (a), "January 31, 1955" for "such date as shall be determined by Presidential proclamation or concurrent resolution of the Congress," and added present subsection (b).

Opinions of Attorney General. — Mr. John R. Parker, Sampson County Attorney, 9/11/69.

Chapter 166.

Civil Defense Agencies.

§ 166-1. Short title.

State Government Reorganization.—The State Civil Defense Agency was transferred to the Department of Military and Veterans Affairs by § 143A-234, enacted by Session Laws 1971, c. 864.

Chapter 167.

State Civil Air Patrol.

§ 167-1. State Civil Air Patrol created; membership, appointment and terms of governing board.

State Government Reorganization.—The State Civil Air Patrol was transferred to the Department of Military and Veterans Affairs by § 143A-235, enacted by Session Laws 1971, c. 864.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1971

I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1971 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

ROBERT MORGAN
Attorney General of North Carolina

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